Issue Papers
2022 Legislative Session

DEPARTMENT OF LEGISLATIVE SERVICES 2021

Issue Papers

2022 Legislative Session

Presentation to the

Maryland General Assembly

Department of Legislative Services
Office of Policy Analysis
Annapolis, Maryland

December 2021

For further information concerning this document contact:

Library and Information Services
Office of Policy Analysis
Department of Legislative Services
90 State Circle
Annapolis, Maryland 21401

Baltimore Area: 410-946-5400 ● Washington Area: 301-970-5400
Other Areas: 1-800-492-7122, Extension 5400
TTY: 410-946-5401 ● 301-970-5401
TTY users may also use the Maryland Relay Service
to contact the General Assembly.

Email: libr@mlis.state.md.us
Home Page: http://mgaleg.maryland.gov

The Department of Legislative Services does not discriminate on the basis of age, ancestry, color, creed, marital status, national origin, race, religion, gender, gender identity, sexual orientation, or disability in the admission or access to its programs, services, or activities. The Department's Information Officer has been designated to coordinate compliance with the nondiscrimination requirements contained in Section 35.107 of the Department of Justice Regulations. Requests for assistance should be directed to the Information Officer at the telephone numbers shown above.

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF POLICY ANALYSIS
MARYLAND GENERAL ASSEMBLY

Victoria L. Gruber
Executive Director

Ryan Bishop
Director

December 2021

The Honorable Bill Ferguson, President of the Senate
The Honorable Adrienne A. Jones, Speaker of the House of Delegates
Members of the General Assembly

Ladies and Gentlemen:

Each fall, the Office of Policy Analysis prepares an informational report on various issues to assist you in your deliberations during the upcoming legislative session. Once again, this document is a compilation of the issue papers arranged by major subject area topic. The information reflects the status of the topics as of November 2021.

We trust this report will be a useful source of information for you. Following each paper is an e-mail address for the staff who worked on a particular topic. If you should need additional information about a topic, please do not hesitate to contact us or the appropriate staff person.

Sincerely,

Victoria L. Gruber
Executive Director
victoria.gruber@mlis.state.md.us

Ryan Bishop
Director
ryan.bishop@mlis.state.md.us

VLG:RB/mrm

Legislative Services Building •90 State Circle • Annapolis, Maryland 21401-1991
410-946-5500 • FAX 410-946-5508 • TDD 410-946-5501
301-970-5500 • FAX 301-970-5508 • TDD 301-970-5401
Other areas in Maryland 1-800-492-7122

Contents

Operating Budget

Economic and Revenue Outlook

The outbreak of the COVID-19 pandemic precipitated a deep but relatively brief contraction in the U.S. economy. Employment in Maryland fell 6.8% in calendar 2020, but wage growth was slightly positive. General fund revenues exceeded expectations in fiscal 2021 by $1.7 billion, and the estimate for fiscal 2022 was revised up by $995 million.

Economic Outlook

The outbreak of the COVID-19 pandemic threw the U.S. economy into a deep but relatively brief contraction. With business and consumers sharply cutting spending as most states around the country imposed some level of closures to slow the virus spread, U.S. inflation-adjusted gross domestic product (GDP) fell 10.1% between the fourth quarter of calendar 2019 and the second quarter of calendar 2020. At that point, growth resumed, and GDP exceeded the prepandemic level by the second quarter of calendar 2021.

Employment contracted sharply at the start of the pandemic, but unlike GDP, it has yet to fully recover. U.S. employment fell by 22.4 million, or 14.7%, between February and April 2020, while the unemployment rate rose from 3.5% to 14.8%. Job growth has progressed at a steady pace, but as of September 2021, the U.S. economy was still down almost 5 million jobs, or 3.3%, from the prepandemic peak. Not surprisingly, wage income fell by 10%; however, total personal income increased 10.3% between February and April 2020, as fiscal support in the form of expanded unemployment insurance benefits, stimulus checks, and aid for small businesses cushioned total income. With the recovering economy, wage growth resumed and managed a small 1.3% increase on average for all of calendar 2020.

The forecasts for economic growth in calendar 2021 look very strong by historical standards but are a function of comparisons to the depressed level in 2020. Economists expect GDP to grow 5.6% in 2021, with employment up 2.7% and wage income rising 7.9%. Employment growth is expected to pick up in calendar 2022 as the sectors most impacted by the pandemic fully recover. U.S. employment is expected to reach its prepandemic level by the third quarter of 2022.

In Maryland, the impact of the pandemic-induced recession has been similar to that of the country as a whole. Between January and April 2020, the State saw employment fall by 400,700 jobs, or almost 14.4%, while the unemployment rate jumped from 3.0% to 9.0%. In the second quarter of 2020 (April to June), Maryland wage income was 2.4% below 2019, while total personal income was up 9.5%, due to the federal fiscal support. On average, for all of 2020, Maryland employment fell 6.8% (188,000 jobs), while wage growth was 1.7%. By August 2021, the Maryland economy was still down almost 110,000 jobs, or 4.0%, from the January 2020 level.

In September 2021, the Board of Revenue Estimates (BRE) issued a revised economic forecast for Maryland, which was its first since March (**Exhibit 1**). BRE expects employment in Maryland to reach its prepandemic level by the first quarter of calendar 2023.

Exhibit 1
Maryland Economic Outlook
Year-over-year Percentage Change

	Employment		Wage and Salary Income	
Calendar Year	**March 2021**	**Sept. 2021**	**March 2021**	**Sept. 2021**
2018	0.9%	0.9%	3.6%	3.5%
2019	0.6%	0.6%	3.6%	3.7%
2020	-5.5%	-6.8%	1.1%	1.7%
2021 Est.	3.2%	2.9%	6.6%	7.0%
2022 Est.	3.0%	3.4%	4.6%	5.2%
2023 Est.	1.1%	1.6%	4.4%	4.2%
2024 Est.	0.8%	0.9%	4.5%	4.1%

Note: The figure for 2020 wage growth under the March 2021 column is an estimate. Wage growth for 2018 through 2020 under the September 2021 column reflects data from the U.S. Bureau of Economic Analysis released on September 24, 2021.

Source: Board of Revenue Estimates

Revenue Outlook

Fiscal 2021 general fund revenues were above the estimate by $1.7 billion, or 8.9%. Ongoing general fund revenues were over the estimate by $1.69 billion, or 9.0%. General fund revenues totaled $20.8 billion in fiscal 2021, which is an increase of 11.8% over fiscal 2020, while ongoing revenues grew 9.9% in fiscal 2021.

The top three revenue sources all exceeded the estimate by significant amounts: $903 million for the personal income tax; $397 million for the sales tax; and $323 million for the corporate income tax. Combined, they account for 95% of the overattainment. The personal income tax performance was the result of payments with tax year 2020 returns exceeding expectations, while refunds were below the estimate. Also, income tax withholding and quarterly estimated payments were both above the estimate in fiscal 2021.

The sales tax rebounded from the depressed level in fiscal 2020 as closures and capacity restrictions eased and consumers began to feel more comfortable returning to restaurants and shopping malls. The sales tax also benefited from a shift in consumer spending from services, which are generally not subject to the sales tax, to taxable goods. Strong fiscal support from the federal government via enhanced unemployment insurance benefits and multiple rounds of stimulus checks supplemented wage growth in calendar 2020 and the first half of 2021 to buoy consumer spending. Excluding certain online sales, fiscal 2021 sales tax gross receipts were up 6.9% over fiscal 2020 and also exceeded the fiscal 2019 level by 1.1%.

The revenue from certain online sales is split between the General Fund and the Blueprint Fund for education. In fiscal 2021, revenue from these online sales totaled $523.3 million with the first $100 million going to the General Fund and the Blueprint Fund receiving $423.3 million. However, this reflects an undercount of the relevant online sales tax revenue in the range of $90 million. Thus, the amount going to the Blueprint Fund should have been higher and the General Fund lower than officially reported. The Comptroller's Office plans to make an extra distribution to the Blueprint Fund in fiscal 2022, once the amount of the undercount is finalized.

In September 2021, BRE increased its estimate for fiscal 2022 general fund revenues by $995.1 million, or 5.0% (see **Exhibit 2**). The personal income tax estimate was revised up by $396.2 million, or 3.5%, and revenues are expected to grow 0.8% over fiscal 2021. General fund sales tax revenues were revised up by $280.5 million, or 5.6%. Sales tax revenues are projected to increase 5.9% over fiscal 2021. General fund revenues are projected to rebound in fiscal 2023, as the pandemic fades and economic growth continues to accelerate.

Exhibit 2

Maryland General Fund Revenue Forecast

($ in Millions)

	Fiscal 2022				Fiscal 2023	
	BRE Mar. 2021	**BRE Sept. 2021**	**$ Diff.**	**%Change 2022/2021**	**BRE Sept. 2021**	**% Change 2023/2022**
Personal Income Tax	$11,401	$11,797	$396	0.8%	$12,634	7.1%
Sales and Use Tax	5,003	5,283	281	5.9%	5,520	4.5%
Corporate Income Tax	1,249	1,446	197	-1.1%	1,556	7.6%
Lottery	592	641	49	1.5%	651	1.6%
Other	1,857	1,929	72	14.4%	1,885	-2.3%
Total	**$20,101**	**$21,096**	**$995**	**1.3%**	**$22,246**	**5.5%**

BRE: Board of Revenue Estimates

Source: Board of Revenue Estimates

For further information contact: Theresa.Tuszynski@mlis.state.md.us

Operating Budget

Budget Outlook

Fiscal 2021 ended with a fund balance of $3.2 billion, of which $1.7 billion was attributable to revenues exceeding forecasts. Revenues are expected to exceed spending for the next several years; by fiscal 2028, the Rainy Day Fund balance is projected at 10% of revenues, and the general fund balance is $7.2 billion. While ongoing revenues are estimated to be substantially more than ongoing spending, the Board of Revenue Estimates notes that actual out-year revenue growth could be affected by economic uncertainties, including inflation, which suggests that the State should approach decisions about how to use this surplus cautiously.

Background

Fiscal 2021 closed with a general fund balance of $3.2 billion, which is approximately $1.8 billion more than the projected closing balance at the end of the 2021 session. The majority of the excess funding was attributable to revenues outperforming estimates by $1.7 billion, or nearly 8.9%. **Exhibit 1** highlights this increase by major revenue component. With unprecedented levels of federal assistance to help sustain incomes and the economy during the COVID-19 pandemic, wages increased, which contributed to enhanced purchases, especially from the newly expanded tax base of marketplace facilitators and digital goods, ultimately resulting in a 28.4% increase in revenues from corporate income taxes.

Exhibit 1
Fiscal 2021 General Fund Revenue Performance
($ in Millions)

	Fiscal 2021 Estimated	Fiscal 2021 Actual	Change
Personal Income Tax	$10,802.0	$11,704.8	$902.8
Sales and Use Tax	4,591.2	4,988.1	396.9
Corporate Income Tax	1,138.8	1,461.9	323.1
State Lottery	626.9	631.7	4.8
Other	1,619.8	1,685.9	66.2
Subtotal Ongoing Revenues	***$18,778.6***	***$20,472.4***	***$1,693.8***
Extraordinary Revenues*	$341.2	$358.6	$17.4
Total Revenues	**$19,119.8**	**$20,831.0**	**$1,711.2**

*Includes $341.4 million in pandemic-related reimbursements from the Federal Emergency Management Agency and $17.2 million from the Maryland Technology Development Corporation

Source: Department of Legislative Services

In addition to the revenue growth, State agencies reverted nearly $185 million at the close of the fiscal year, in large part due to lower than expected spending in prior years by the Behavioral Health Administration. In addition, several agencies were able to revert funds as the COVID-19 pandemic either lowered managed populations and other operating expenses or federal stimulus funds were available to use in lieu of general funds. These reversions were slightly offset by the Administration electing not to implement $96 million in anticipated transfers from the Rainy Day Fund and the Unemployment Insurance Fund for State workers due to the significant amount of additional revenue realized at the end of year closeout.

Exhibit 2 illustrates how the State's improved fiscal position is carried forward into the current fiscal year, with a projected fiscal 2022 closing balance of nearly $3.6 billion, despite the need for $122 million in identified additional spending through general fund deficiency appropriations. The Board of Revenue Estimates (BRE) projects that the revenue growth will provide fiscal 2022 with an additional $995 million in general fund revenues, offset by slight downward revisions to reflect the smoothing out of certain tax credit spending. The fiscal 2022 fund balance is also enhanced by $250 million in assumed reversions to recognize the use of American Rescue Plan Act (ARPA) funds in lieu of general fund expenses as a means of backfilling economic recovery initiatives funded in fall 2020 prior to the enactment of the ARPA.

Exhibit 2

Evolution of the General Fund Balance

Fiscal 2021-2022

($ in Millions)

	2021	2022
Estimated Closing Balance – July 2021	**$1,439**	**$679**
Revenue and Transfers		
Adjustment to Revenues	$1,711	$987
Transfers	-96	
Higher Than Anticipated Fiscal 2021 Fund Balance		1,800
Spending		
Reversions Above Estimate	$185	$250
Estimated Deficiency Appropriations		-122
Estimated Closing Balance – November 2021	**$3,239**	**$3,594**

Source: Department of Legislative Services

Fiscal 2023 to 2028 Forecast

Relative to the forecast prepared following the 2021 session, which projected structural deficits starting in fiscal 2023 followed by cash shortfalls beginning in fiscal 2024, the State's fiscal outlook has improved significantly. As **Exhibit 3** shows, the additional revenue at closeout and subsequent upward revisions of revenue estimates throughout the forecast period contribute to a projected closing cash balance of over $1.7 billion in fiscal 2023 that grows to $7.2 billion by fiscal 2028. The forecast also assumes maintenance of a Rainy Day Fund balance equivalent to 10% of general fund revenues beginning in fiscal 2024. In terms of structural balance, the forecast now projects a surplus for the entire forecast period, peaking at close to $1.6 billion in fiscal 2026 before beginning to decrease in fiscal 2027 and 2028, as general funds are needed to continue implementing education initiatives previously funded solely through the Blueprint for Maryland's Future Fund.

While the near term fiscal outlook is very promising, spending begins to grow at a faster rate than revenues in fiscal 2027 and 2028 when general funds are needed to supplement the Blueprint Fund. In addition, BRE has noted that the projected sustained levels of income and spending in the revenue forecast could be negatively impacted by potential economic uncertainties and persistent inflation in the next iteration of the pandemic. This suggests that decision makers should use caution in making large ongoing spending commitments that may be affordable in the near term but unsustainable over time.

Exhibit 3
General Fund Projections
Fiscal 2023-2028
($ in Millions)

	Baseline 2023	Est. 2024	Est. 2025	Est. 2026	Est. 2027	Est. 2028	Annual Change
Revenues							
Opening Fund Balance	$3,594	$1,740	$4,019	$5,092	$6,274	$6,975	
Transfers	0	2,940	1,619	3,889	4,990	$6,162	
Subtotal One-time Revenue	***$3,594***	***$4,680***	***$5,638***	***$8,981***	***$11,264***	***$13,137***	
Ongoing Revenues	$22,294	$23,445	$24,305	$25,274	$25,954	$26,731	3.7%
Total Revenues and Fund Balance	**$25,888**	**$28,125**	**$29,944**	**$34,255**	**$37,218**	**$39,868**	**9.0%**
Spending							
Ongoing Spending	$21,525	$22,099	$22,850	$23,701	$24,811	$26,108	3.9%
PAYGO Capital/Other	$86	$86	$87	$87	$167	$167	
Legislation/One-time Adjustments/Swaps	0	0	0	0	0	0	
Appropriation to Reserve Fund	2,537	1,921	1,915	4,194	5,266	6,444	
Subtotal One-time Spending	***$2,623***	***$2,007***	***$2,002***	***$4,280***	***$5,432***	***$6,610***	
Total Spending	**$24,148**	**$24,106**	**$24,852**	**$27,981**	**$30,243**	**$32,718**	**6.3%**
Ending Balance	**$1,740**	**$4,019**	**$5,092**	**$6,274**	**$6,975**	**$7,151**	
Rainy Day Fund Balance	$3,587	$2,339	$2,425	$2,520	$2,587	$2,666	
Balance Over 5% of GF Revenues	2,475	1,170	1,213	1,260	1,294	1,333	
As % of GF Revenues	16.1%	10.0%	10.0%	10.0%	10.0%	10.0%	
Cash Balance Plus Rainy Day Fund Over 10% of GF	$3,103	$4,020	$5,093	$6,274	$6,975	$7,151	
Structural Balance	**$769**	**$1,346**	**$1,455**	**$1,573**	**$1,143**	**$623**	

GF: General Fund
PAYGO: pay-as-you-go

Source: Department of Legislative Services

For further information contact: Rebecca.Ruff@mlis.state.md.us

Operating Budget

Transportation Trust Fund Overview

The Transportation Trust Fund ended fiscal 2021 with a $425 million fund balance, which is $275 million more than assumed during the 2021 legislative session. Large debt issuances following the motor fuel tax increase in 2013 have led to lower planned issuances in the current forecast. Total issuances are projected at just under $1.7 billion, which is much lower than the $2.8 to $3.6 billion levels assumed in the 2015 to 2022 forecasts.

Fiscal 2021 Closeout

The Transportation Trust Fund (TTF) ended fiscal 2021 with a fund balance of $425 million, which is $275 million higher than the target closing balance of $150 million.

State-source revenues and federal operating assistance closed out $541 million higher than projected with COVID relief/stimulus funding accounting for $210 million of the increase. Titling tax revenue exceeded projections by $172 million, and corporate income tax revenue closed $72 million higher than expected.

Total expenditures were $266 million more than projected with higher than expected operating expenses ($229 million) accounting for the majority of the increase. Capital spending was $24 million higher than projected and transportation aid to local governments, which is based on actual revenue collections, closed out $23 million higher than projected.

Fiscal 2022 to 2027 Transportation Trust Fund Forecast

Exhibit 1 shows the fiscal 2022 to 2027 TTF forecast by the Department of Legislative Services (DLS). The forecast details the expected trends in revenue attainment, debt issuance, and expenditures. The DLS forecast is similar to that released by the Maryland Department of Transportation (MDOT) in September 2021. Compared to the MDOT forecast, DLS projects $94 million more in tax and fee revenue over the six-year forecast but also operating expenses $138.6 million higher than assumed by MDOT. A higher than projected fiscal 2021 closing fund balance combined with higher projected revenues allows for additional bond sales of $64 million to support the capital program.

Exhibit 1
Transportation Trust Fund Forecast
Fiscal 2022-2027
($ in Millions)

	2022	2023	2024	2025	2026	2027	Total 2022-2027
Opening Fund Balance	**$425**	**$175**	**$175**	**$175**	**$175**	**$175**	
Closing Fund Balance	**$175**	**$175**	**$175**	**$175**	**$175**	**$175**	
Net Revenues							
Taxes and Fees	$2,972	$3,129	$3,164	$3,217	$3,271	$3,324	$19,076
Operating and Miscellaneous	1,127	893	647	606	626	646	4,545
Subtotal	***$4,099***	***$4,022***	***$3,811***	***$3,823***	***$3,897***	***$3,970***	***$23,621***
Bond Proceeds/Premiums	$335	$0	$410	$257	$357	$310	$1,669
Fund Balance (Increase)/Use	250	0	0	0	0	0	250
Total Net Revenues	**$4,684**	**$4,022**	**$4,221**	**$4,080**	**$4,254**	**$4,280**	**$25,540**
Expenditures							
Debt Service	$455	$484	$441	$458	$451	$488	$2,779
Operating Budget	2,265	2,327	2,375	2,423	2,578	2,691	14,659
State Capital (Incl. State Aid)	1,964	1,211	1,405	1,198	1,225	1,100	8,103
Total Expenditures	**$4,684**	**$4,022**	**$4,221**	**$4,080**	**$4,254**	**$4,280**	**$25,540**
Debt							
Debt Outstanding	$3,671	$3,337	$3,448	$3,388	$3,432	$3,391	
Debt Coverage – Net Income	3.3	3.7	3.6	2.9	2.8	2.5	
Capital Summary							
State Capital (Excl. Local Aid)	$1,698	$940	$1,131	$1,001	$1,026	$899	$6,696
Mandated Local Aid Capital Grants	265	271	274	197	199	201	1,407
Other Funds (Nonbudgeted)	354	302	324	240	134	100	1,454
Other State Funds	125	167	167	167	167	167	960
Net Federal Capital (Cash Flow)	1,269	1,315	873	850	900	903	6,110
Total Capital Expenditures	**$3,712**	**$2,995**	**$2,769**	**$2,455**	**$2,426**	**$2,270**	**$16,627**

Note: Numbers may not sum to totals due to rounding.

Source: Department of Legislative Services

Revenues

Over the six-year forecast, DLS estimates that tax and fee revenue, including revenue going to other State agencies to cover transportation-related activities, will total $23.6 billion. Strong growth is projected in fiscal 2023 as revenues recover from COVID-related declines. Modest growth rates between 1.6% to 1.7% are assumed for the remaining years of the forecast resulting in a five-year average annual rate of growth of 2.3%.

Operating and Debt Service Expenditures

Operating and debt service expenditures are the first draw on TTF revenues. Over the six-year period, operating expenses are estimated to total nearly $14.7 billion, and debt service expenditures are estimated to total almost $2.8 billion.

Debt Financing

Debt issued by MDOT supports the capital program. Debt issuances are limited by a total debt outstanding cap of $4.5 billion and two coverage tests that require the prior year's pledged taxes and net income to be at least 2.0 times greater than the maximum debt service for all bonds outstanding in the current fiscal year. MDOT has an administrative goal of maintaining a minimum 2.5 times pledged taxes and net income to maximum debt service ratio. Large debt issuances following the motor fuel tax increase in 2013 have led to the net income debt ratio (the more limiting of the two coverage ratios) approaching the minimum acceptable level and consequently to lower planned issuances in the current forecast. Total issuances are projected at just under $1.7 billion, which is a level much lower than the $2.8 to $3.6 billion levels assumed in the 2015 to 2022 forecasts. The net income debt ratio declines from 3.7 times in fiscal 2023 to 2.5 times by fiscal 2027.

Capital Expenditures

Improving revenue attainment and federal COVID/stimulus support of $888 million result in an increase of $1.6 billion in the State capital program compared with the January 2021 TTF forecast. The $6.7 billion projected capital program is larger than was projected in the prepandemic January 2020 forecast.

Local Transportation Aid

Local transportation aid in the form of mandated capital grants totals just over $1.4 billion over the six-year period. Chapters 330 and 331 of 2018 increased the amount of transportation aid going to local governments to the equivalent of 13.5% of the Gasoline and Motor Vehicle Revenue Account for fiscal 2020 through 2024. After fiscal 2024, the local share returns to the 9.6% level in effect prior to enactment of this legislation.

For further information contact: Steve.McCulloch@mlis.state.md.us

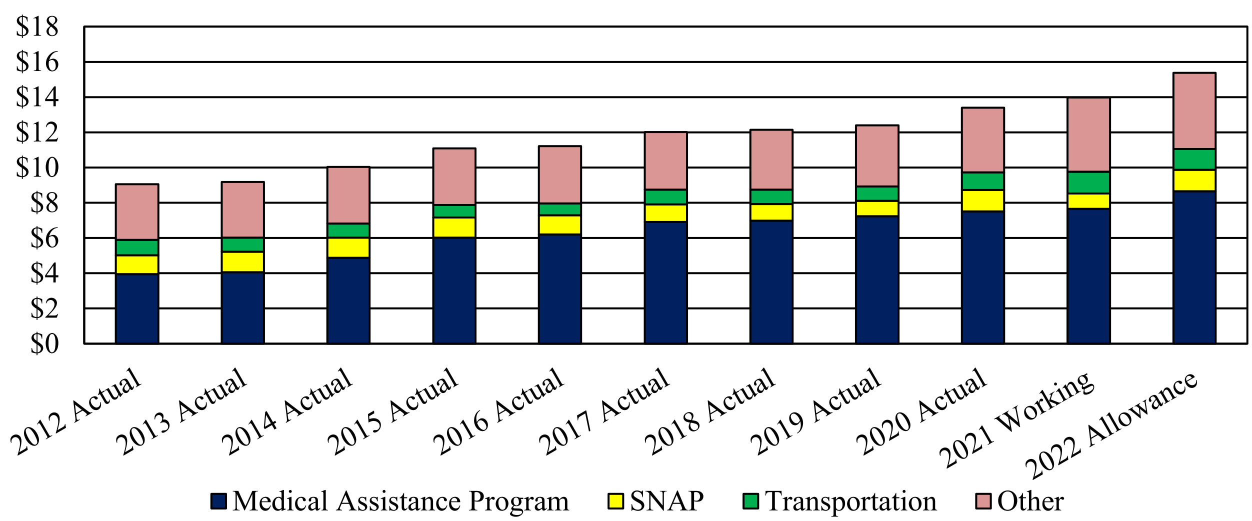
Federal Funds Outlook

About $68.7 billion in COVID–19 pandemic-related federal funds have flowed to Maryland households, businesses, State and local governments, and health care providers. Of the funds allocated to Maryland, 71% is awarded directly to individuals, businesses, and local governments. Of the nearly $17 billion in funds anticipated to flow through the State budget, $5.4 billion has yet to be appropriated, including $149 million in discretionary funding.

Federal Funds to Maryland

Federal funds to the State (excluding COVID-19-related funds) grew by an average of 4% each year for the past decade, with the fiscal 2022 allowance containing $15.4 billion in funding from the federal government, as shown in **Exhibit 1**. The final budget enacted by the General Assembly included an additional $8.3 billion of federal COVID-19 pandemic funding spread across fiscal 2021 and 2022.

Exhibit 1
Federal Funds by Source
Fiscal 2012-2022 Allowance
($ in Billions)



SNAP: Supplemental Nutrition Assistance Program

Note: COVID-19 pandemic funding is excluded.

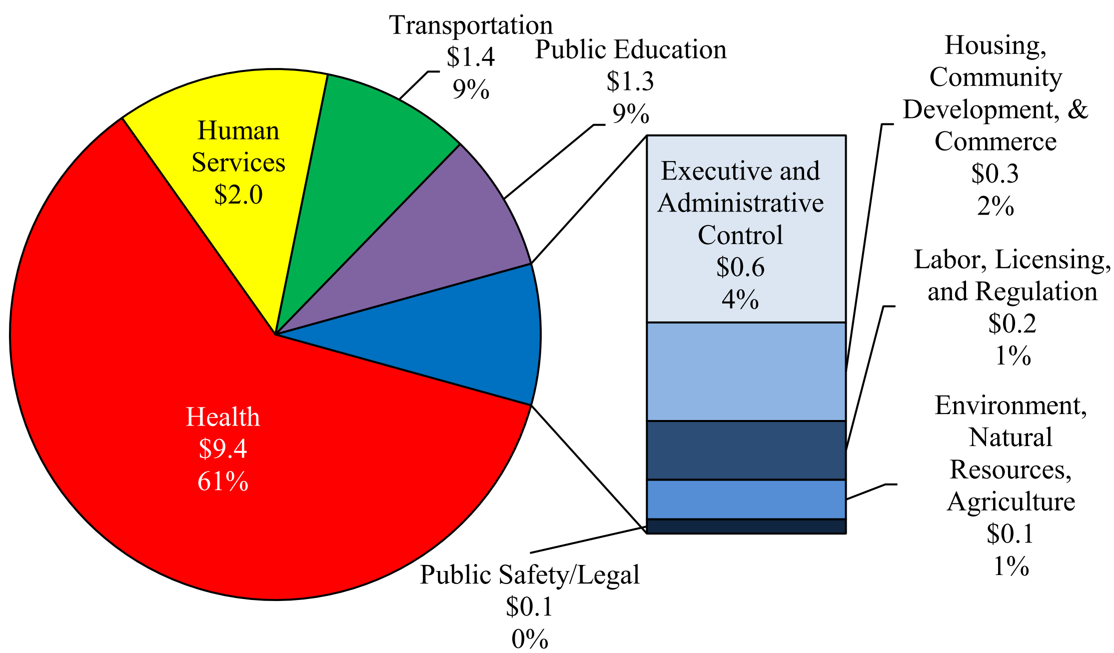
Source: Department of Budget and Management; Department of Legislative Services

Medicaid provider reimbursements continue to make up the single largest share of federal funds into the State, accounting for $8.6 billion in the fiscal 2022 allowance. While the Supplemental Nutrition Assistance Program (SNAP) makes up the second single largest source of federal funds ($1.2 billion), combined funding for transportation, which includes federal transit grants and highway planning and construction dollars, collectively represents $1.2 billion in federal funds as well. The next largest single source is federal pass-through dollars for the State's health reinsurance program ($377 million). This program and the fund source are relatively new, with fiscal 2021 being the first year that the program is represented in the budget. Federal dollars for the reinsurance program have been roughly equal for fiscal 2021 and 2022.

Distribution of Federal Funds by State Agency

The distribution of the $15.4 billion in fiscal 2022 federal funds by department/service area is illustrated in **Exhibit 2**. The areas with the most federal funding are (1) health, primarily due to Medicaid funding; (2) human services, primarily due to SNAP and other social services grants; (3) transportation; and (4) public education. These four areas receive 91% of federal funding to the State.

Exhibit 2
Federal Funds in Fiscal 2022 Allowance
($ in Billions)



Note: COVID-19 pandemic funding is excluded.

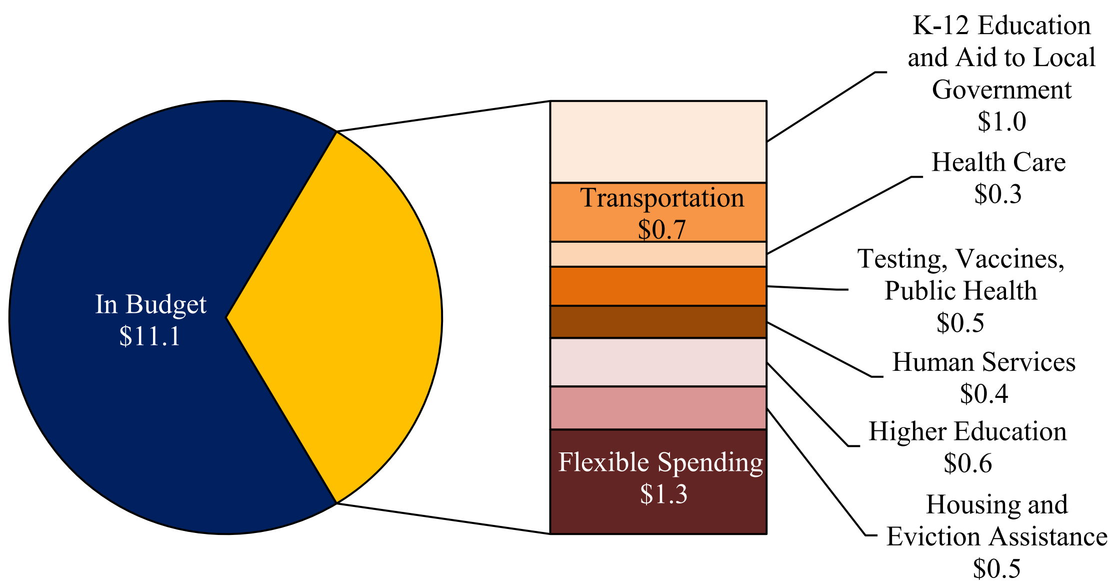
Source: Department of Budget and Management; Department of Legislative Services

COVID-19 Federal Relief Funding

Significant federal funds have been provided to Maryland over the course of the COVID-19 pandemic. In total, an estimated $68.7 billion is expected to enter Maryland from the federal government, nearly 71% of which is estimated to be allocated directly to households, businesses, or local governments. For the purposes of this issue paper, the discussion will focus on the $16.6 billion that is expected to flow through the State's budget.

As of October 2021, approximately 68% of anticipated federal funds have already entered the budget, leaving $5.4 billion yet to be brought in. The distribution of the outstanding federal money is highlighted in **Exhibit 3**.

Exhibit 3
Anticipated Federal Dollars Outstanding
($ in Billions)

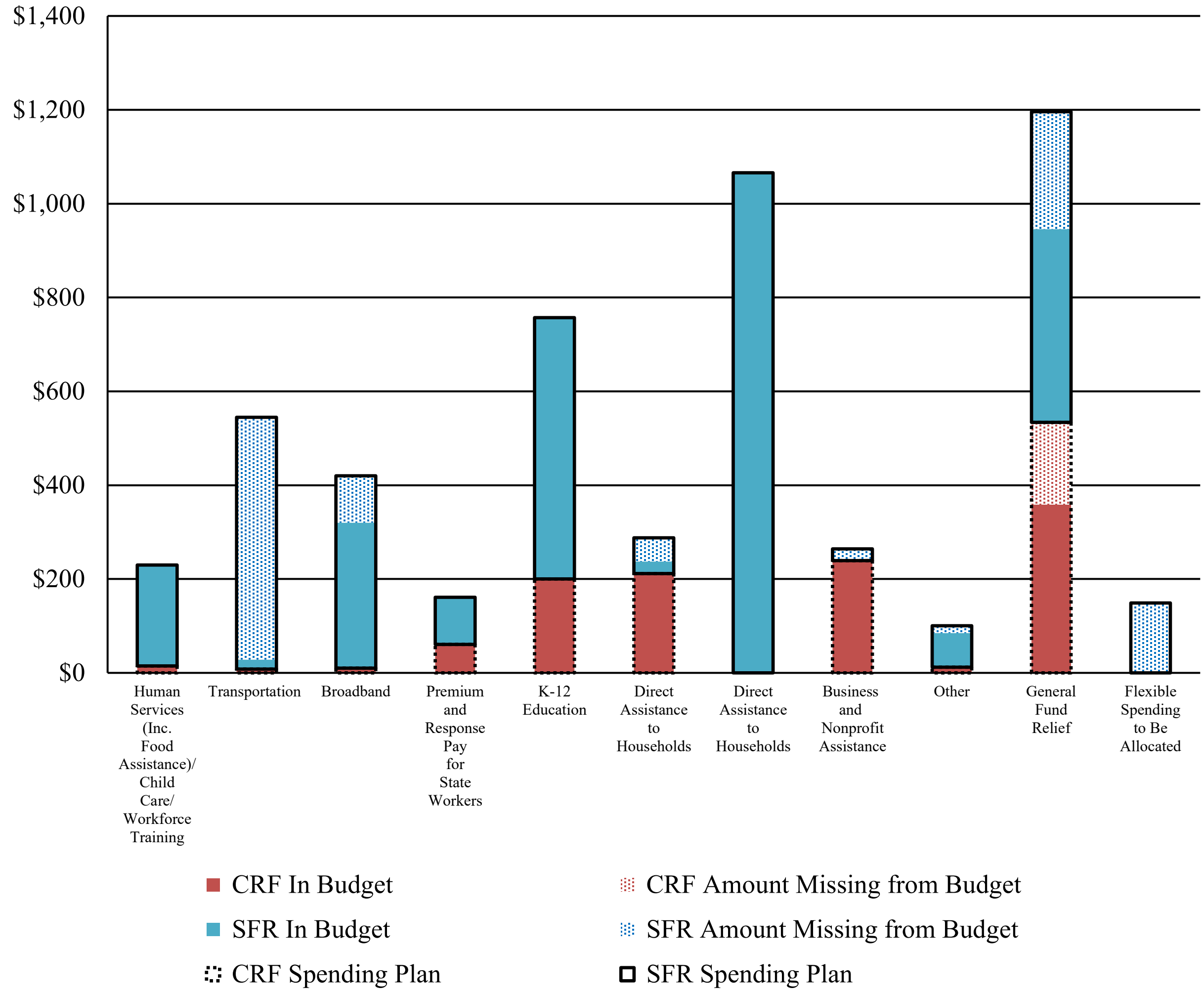


Source: Department of Legislative Services

Flexible Spending Dollars

Two of the largest sources of federal funds were flexible dollars from the Coronavirus Relief Fund and the State Fiscal Recovery Funds, providing $1.6 billion and $3.7 billion, respectively, anticipated to enter the State's budget. **Exhibit 4** shows the proposed uses of both sets of funding, while also highlighting which funds have yet to be brought into the State's budget. To date, there is $149 million unallocated under the Governor's most recent spending plan and over $900 million yet to be brought into the budget.

Exhibit 4
Distribution of Flexible Spending Dollars
($ in Millions)



CRF: Coronavirus Relief Fund
SFR: State Fiscal Recovery

Source: Department of Budget and Management; Department of Legislative Services

Federal Fiscal 2022 Budget Update

Although federal fiscal 2022 began October 1, 2021, as of November 15, 2021, there has been no House-Senate agreement on spending levels, which is required for final appropriations to pass. As such, all 12 spending bills have yet to be approved. The current continuing resolution, effective through December 3, 2021, maintains spending at prior-year levels with certain exceptions. It also extends certain benefits and assistance enhanced during the COVID-19 pandemic.

On November 15, 2021, President Joseph R. Biden, Jr. signed into law the Infrastructure Investment and Jobs Act. This legislation reauthorizes surface transportation programs and funds a wide array of infrastructure programs. It authorizes over $1 trillion in spending over five years, including at least $2.9 billion for Maryland. In addition, the Biden Administration has proposed support for funding a wide range of human infrastructure priorities addressed through the Build Back Better Act. These include health care expansion, universal pre-K, climate investments, and affordable housing.

For further information contact: Andrew.Garrison@mlis.state.md.us

Capital Budget

Debt Affordability

Each fall, the State's Capital Debt Affordability Committee meets to assess the size and condition of State tax-supported debt and make recommendations to the Governor and the Maryland General Assembly on the level of general obligation debt that is affordable under the State's debt affordability guidelines. The recent Board of Revenue Estimates write-up of State general fund revenues resulted in improved affordability ratios over the prior year's estimates.

Capital Debt Affordability Process

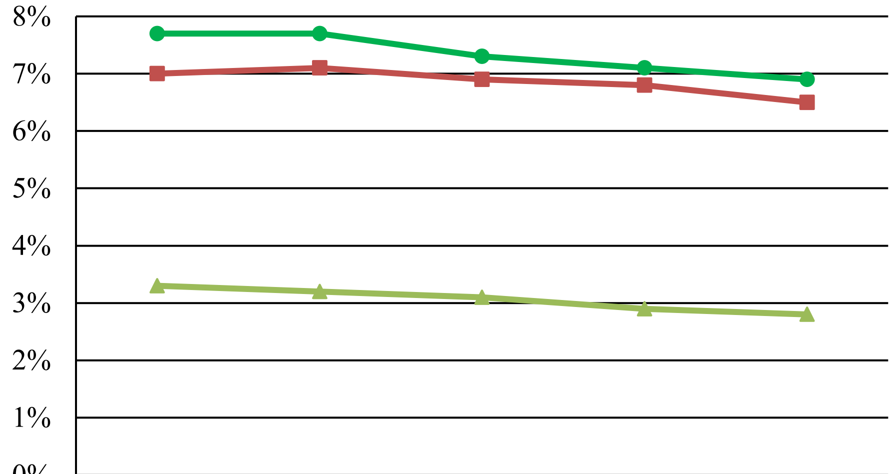
State law requires the Capital Debt Affordability Committee (CDAC) to review the size and condition of all tax-supported debt[1] and to make annual nonbinding recommendations to the Governor and the Maryland General Assembly on the level of general obligation (GO) and University System of Maryland Academic Revenue Bond (ARB) debt. This process is intended to ensure that the State's tax-supported debt burden remains affordable and within the limits established by CDAC. State policy limits State debt outstanding to 4% of personal income and State debt service to 8% of State revenues. The committee is chaired by the State Treasurer and includes the State Comptroller, the Secretary of Transportation, the Secretary of Budget and Management, and a public member. The chairs of the Capital Budget subcommittees for the Senate Budget and Taxation Committee and the House Appropriations Committee serve as nonvoting members.

Affordability Ratios

In September 2021, the Board for Revenue Estimates increased its estimate of general fund revenues through fiscal 2027, which substantially reduced the State's debt service to revenues affordability ratio in all years of the planning period. In October 2020, the State Treasurer's Office (STO) estimated that the fiscal 2023 debt service to revenues ratio was at least 7.7%, compared to 7.1% in October 2021. Despite the improved debt affordability ratios, CDAC recommended that fiscal 2023 GO bond authorizations be limited to $900 million, which is $215 million less than was planned in the 2021 *Capital Improvement Program*. The Department of Budget and Management recommended an increased use of pay-as-you-go capital instead. **Exhibit 1** shows the decline in the debt service to revenues affordability ratio, which is almost entirely attributable to higher revenues and not the lower authorization level recommended by CDAC.

[1] Tax-supported debt consists of tax-exempt and taxable general obligation debt, transportation debt, bay restoration bonds, capital leases, certain Maryland Stadium Authority debt, and bond or revenue anticipation notes.

Exhibit 1
Affordability Ratios with CDAC Recommendation
Fiscal 2022-2026



	2022	2023	2024	2025	2026
2020 Debt Service Ratio	7.7%	7.7%	7.3%	7.1%	6.9%
2021 Debt Service Ratio	7.0%	7.1%	6.9%	6.8%	6.5%
2020 and 2021 Debt Outstanding Ratio	3.3%	3.2%	3.1%	2.9%	2.8%

CDAC: Capital Debt Affordability Committee

Source: State Treasurer's Office; Department of Legislative Services, October 2021

Debt service to revenues peak in fiscal 2022 and 2023 at 7.0%, while debt outstanding to personal income peaks in fiscal 2021 at 3.3%; and both ratios decline steadily throughout the period, regardless of the lower authorization level recommended by CDAC. The Department of Legislative Services (DLS) estimates that reducing the fiscal 2023 authorization is not expected to affect the ratios in fiscal 2023 and results in just a 0.06% decrease in the debt service to revenue ratio through fiscal 2027. Lowering authorizations has limited effects on the affordability ratios in the short term because issuances are structured so that the first two years require principal only payments. Also, authorizations are typically issued over a period of five years to account for the time it takes to build capital projects.

Components of State Tax-supported Debt

GO bonds finance the State's capital program, which supports local public school construction, higher education, State facilities, and other capital projects. DLS projects that GO bond debt service payments will total $1.4 billion and debt outstanding will be $10 billion in fiscal 2023.

Transportation bonds are limited obligation instruments, the proceeds of which fund highway and other transportation-related projects. Debt service on these bonds is funded from the Transportation Trust Fund, which is supported by motor vehicle fuel taxes, titling and registration fees, a portion of the corporate income tax, and other Maryland Department of Transportation (MDOT) revenues. State law limits consolidated transportation bonds outstanding to $4.5 billion. MDOT projects that total outstanding transportation debt will be $3.3 billion in fiscal 2023. Transportation bond debt service is projected to be $472 million in fiscal 2023.

The Bay Restoration Fund was created by Chapter 428 of 2004 to provide grants for enhanced nutrient removal pollution reduction upgrades at the State's major wastewater treatment plants. The fund has several revenue sources and expends funds for both operating and capital program purposes. To date, the State has issued $330 million in bonds supported by the revenues deposited into the fund. The Maryland Department of the Environment (MDE) indicates that the final $100 million will be issued in fiscal 2023. MDE estimates that $286 million in bonds will be outstanding at the end of fiscal 2023. Debt service costs are projected to be $32 million in fiscal 2023 and $44 million in fiscal 2024.

Capital leases for real property and equipment are also considered State debt if the revenues supporting the debt are State tax revenues. Examples of capital leases include the MDOT Headquarters Office Building and the Prince George's County Justice Center. STO advises that debt outstanding for leases was $175 million at the end of fiscal 2021. Capital lease payments were $28 million in fiscal 2021.

The final category of State debt is Maryland Stadium Authority (MSA) debt. Some MSA debt is also limited obligation debt and represents bonds sold for the construction of the Camden Yards baseball and football stadiums, the Baltimore and Ocean City convention centers, the Hippodrome Theater, and the Montgomery County Conference Center. The facilities' debt service is supported by lottery revenues and other general fund sources. MSA debt includes its capital leases. MSA debt outstanding is expected to be $85 million at the end of fiscal 2023. MSA advises that debt service payments are projected to be $16 million in fiscal 2023.

University Debt

The University System of Maryland (USM), Morgan State University (MSU), St. Mary's College of Maryland (SMCM), and Baltimore City Community College (BCCC) have the authority to issue debt for academic facilities as well as auxiliary facilities. Unlike the other authorizations, ARBs are not considered to be State debt; instead, they are a debt of the institutions. Proceeds from academic debt issued are used for facilities that have an education-related function, such as classrooms. Debt service for these bonds is paid with tuition and fee revenues. For fiscal 2023, CDAC recommends $30 million for academic facilities on USM campuses. No issuances are anticipated for MSU, SMCM, or BCCC.

For further information contact: Patrick.Frank@mlis.state.md.us

Capital Budget

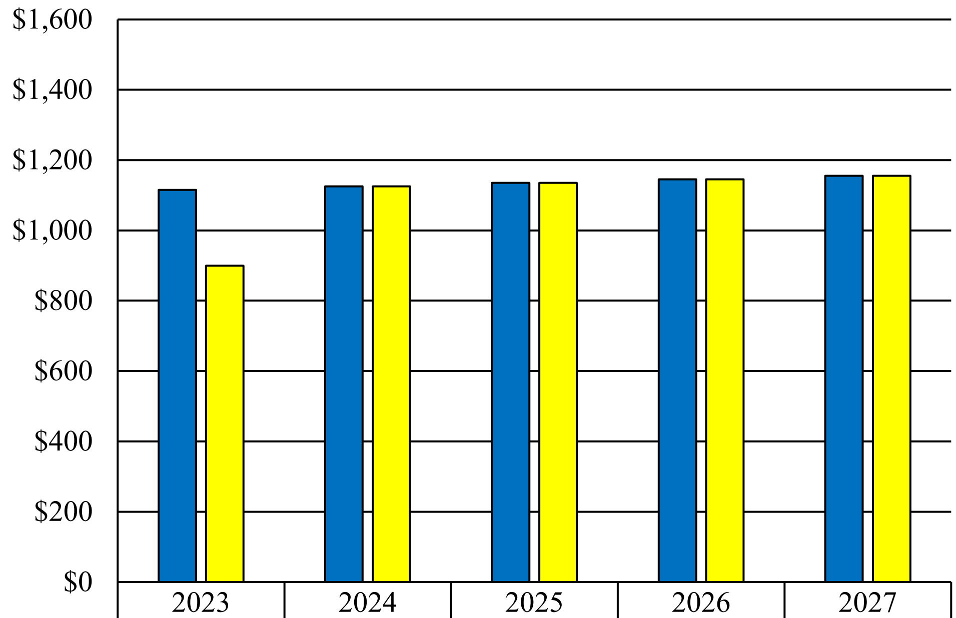
Capital Funding Requests

On October 18, 2021, the Capital Debt Affordability Committee recommended reducing the level of new general obligation bond authorizations from the $1.115 billion planned for fiscal 2023 to just $900 million. Beginning in fiscal 2024, the committee's long-range plan restores the annual authorization level to the amount programmed in the 2021 *Capital Improvement Program* (CIP) and includes continuing the policy of increasing authorizations 1% annually on a year-over-year basis. The recommendation for fiscal 2023 is $215 million less than what is currently programmed in the 2021 CIP. The Administration cites the availability of general funds and bond premiums to supplement the capital program.

Capital Debt Affordability Committee Recommends Reduced General Bond Authorization Levels

As shown in **Exhibit 1**, the Capital Debt Affordability Committee (CDAC) recommended a level of general obligation (GO) bond authorizations for the five-year forecast period beginning in fiscal 2023 below both the level recommended by the Spending Affordability Committee (SAC) in December 2020 and the amount programmed in the 2021 *Capital Improvement Program* (CIP). The CDAC recommendation reduces the fiscal 2023 authorization level by $215 million, from the $1.115 billion planned in the 2021 CIP to $900 million. The committee's recommendation returns the out-year authorization levels back to the 2020 SAC recommended and 2021 CIP programmed amounts beginning in fiscal 2024. The recommendation includes annual 1% increases through the planning period as has been recent practice.

Exhibit 1
CDAC Recommended and CIP Planned Authorization Levels
Fiscal 2023-2027
($ in Millions)



	2023	2024	2025	2026	2027
2021 CIP 1%	$1,115	$1,125	$1,135	$1,145	$1,155
CDAC Recommendation	900	1,125	1,135	1,145	1,155

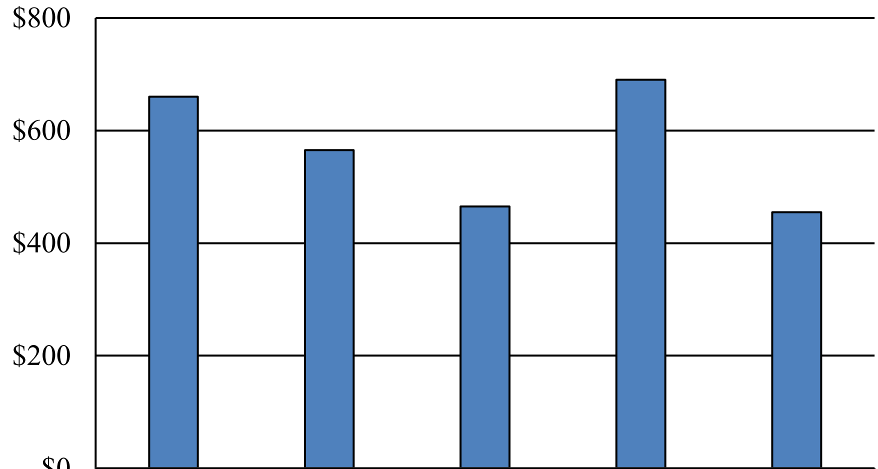
CDAC: Capital Debt Affordability Committee
CIP: *Capital Improvement Program*

Source: 2021 *Capital Improvement Program*; Department of Budget and Management

Commitments Exceed Programmed and Recommended Authorization Levels

The amount of annual GO bond authorization currently programmed in the State's five-year CIP is already insufficient to accommodate all agency requests, and the lower authorization level recommended by CDAC would increase this disparity in fiscal 2023. **Exhibit 2** illustrates the variance between agency GO bond requests and the level of authorization recommended by CDAC. At the lower authorization level, the disparity is $660 million for fiscal 2023 and an aggregate of $2.8 billion through fiscal 2027, of which 70% is comprised of public school construction and higher education requests.

Exhibit 2
GO Bond Requests Exceed Recommended Authorization Levels
Fiscal 2023-2027
($ in Millions)



	2023	2024	2025	2026	2027
Amount GO Bond Requests Exceed CDAC Limit	$660	$565	$465	$690	$455

CDAC: Capital Debt Affordability Committee
GO: general obligation

Source: Department of Legislative Services

Improved Fiscal Condition – Use of General Funds in Capital Program

In September the Board of Revenue Estimates (BRE) announced that the State closed fiscal 2021 with a $2.5 billion general fund balance. A week later BRE increased the fiscal 2022 revenue projections by nearly $1 billion and out-year projections within the planning period by nearly $1.4 billion annually.

The State's strong cash position and projected structural surplus will undoubtedly draw proposals on how to use the funds. One possible use would be to supplement the State's capital program with general funds – an option that formed the basis of CDAC's recommendation to reduce the level of new GO bond authorizations in fiscal 2023. **Exhibit 3** shows that the capital program would require $545 million of general funds in fiscal 2023 to meet commitments already made, absorb the impact of CDAC's lower GO bond authorization level, and accommodate rising construction costs. Addressing the gap that exists between programmed authorization levels and agency capital requests and the State's long standing facility renewal backlog (estimated at

$300 million for Department of General Services- and Department of Natural Resources-managed facilities) will require an even larger infusion of cash or a higher debt limit.

Exhibit 3
Estimated Amount of General Fund PAYGO Needed at CDAC Recommended GO Bond Authorization Level to Fund Prior Commitments
Fiscal 2023
($ in Millions)

	2023
Lower CDAC recommended GO bond authorization levels	$215.0
Current general fund PAYGO forecast (including $24.7 million in the DPA for POS replacement plan and $42 million for WMATA grants)	155.0
Preauthorizations for fiscal 2023 above what is programmed in 2021 CIP	125.0
Estimated amount needed to address impact of construction cost increase for projects in various stages of contracting	50.0
General Fund PAYGO	**$545.0**

CDAC: Capital Debt Affordability Committee
CIP: *Capital Improvement Program*
DPA: Dedicated Purpose Account
GO: general obligation
PAYGO: pay-as-you-go
POS: Program Open Space
WMATA: Washington Metropolitan Area Transit Authority

Source: Department of Legislative Services

Revenues and Taxes

Tax Expenditure Evaluation Act

During the 2021 legislative session, the General Assembly passed legislation altering the procedures related to legislative review and evaluation of tax credit programs. The changes provide greater flexibility to the statutory process and broaden the scope of the review and evaluation to include tax exemptions and preferences.

Tax Credit Evaluation Act

Chapters 568 and 569 of 2012 established the Tax Credit Evaluation Act, a legislative process providing for the review of State tax credits. The evaluation process was conducted by a legislative evaluation committee and done in consultation with the Comptroller's Office, the Department of Budget and Management, the Department of Legislative Services (DLS), and the agency that administers each tax credit being evaluated. Chapter 582 of 2016 subsequently amended the requirements of the committee and evaluation process.

The Tax Credit Evaluation Act required the evaluation committee to evaluate specified tax credits in certain years. The year prior to the required evaluation date, DLS published an evaluation of the tax credit. The committee reviewed the following credits: enterprise zone; One Maryland; earned income; film production activity; historic revitalization; businesses that create new jobs; job creation; research and development; biotechnology investment incentive; Regional Institution Strategic Enterprise Zone; and More Jobs for Marylanders income and sales tax credits. The committee also reevaluated the enterprise zone and One Maryland credits.

Changes to the Evaluation Process

During the 2021 legislative session, the General Assembly passed legislation (Chapter 575) altering the tax credit evaluation process. The changes provide greater flexibility to the legislative review process and broaden the scope of the legislative review to include tax exemptions and preferences, which were previously not subject to review. In lieu of a joint legislative committee, which is eliminated by the Act, DLS is required to evaluate a tax credit, exemption, or preference as a result of a request by the Senate Budget and Taxation Committee, the House Ways and Means Committee, the Executive Director of DLS, or the Director of the Office of Policy Analysis of DLS.

Each tax credit, exemption, or preference must be evaluated by DLS and reported to the General Assembly on a number of factors, including (1) the purpose for which the program was established; (2) whether the original intent of the program is still appropriate; (3) whether the program is meeting its objectives; (4) whether the goals could be more effectively carried out by other means; and (5) the cost of the program to the State and local governments. The DLS report is also required to include a recommendation as to whether the program should be continued, with or without changes, or terminated.

DLS must also (1) beginning on October 1, 2022, evaluate at least once every 10 years each income tax credit that is primarily claimed by businesses and has an annual fiscal impact exceeding $5.0 million and (2) in consultation with the committees, publish on its website a schedule of the evaluations that will be conducted. DLS has identified the State income tax credits that must be reviewed under the Act and, subject to input from the committees, is in the process of establishing the schedule of tax preference evaluations.

Revenues and Taxes

Evaluation of the More Jobs for Marylanders Program

The More Jobs for Marylanders Program provides State income tax, sales tax, property tax, and fee benefits to certain businesses that create and maintain a minimum number of qualified jobs. The Department of Legislative Services recently conducted an evaluation of the program that identifies several challenges and recommendations related to the program.

Tax Credit Evaluation Act

Chapters 568 and 569 of 2012 established the Tax Credit Evaluation Act, a legislative process providing for the regular review of certain State tax credits. In 2020, a legislative evaluation committee was required to evaluate the More Jobs for Marylanders income and sales tax credit in accordance with the Act. To assist the committee in its work, the Department of Legislative Services (DLS) evaluated the More Jobs for Marylanders Program based on a number of required factors, including (1) the purpose for which the program was established; (2) whether the original intent of the program is still appropriate; (3) whether the program is meeting its objectives; (4) whether the goals of the program could be more effectively carried out by other means; and (5) the cost of the program to the State and local governments.

In January 2021, DLS submitted its report on the More Jobs for Marylanders Program directly to the General Assembly. During the 2021 legislative session, the General Assembly passed legislation (Chapter 575) eliminating the legislative evaluation committee and altering the tax credit evaluation process. For more information on the new process, see "Tax Expenditure Evaluation Act" within the Revenues and Taxes section of this *Issue Papers of the 2022 Session*.

More Jobs for Marylanders Program

Chapter 149 of 2017 established the More Jobs for Marylanders Program, which is administered by the Maryland Department of Commerce (Commerce) and provides State income tax, sales tax, property tax, and fee benefits to certain businesses that create and maintain a minimum number of qualified jobs. Eligibility for specific benefits is determined by the type of business, its location, and whether it is a new business. Generally, a business must either operate or conduct a trade or business that is primarily engaged in manufacturing or be located in a federal opportunity zone, and not be otherwise excluded by law.

From October 4, 2018, through May 18, 2020, Commerce awarded 42 initial credit certificates for the first benefit year, 11 of which received final tax credits. Commerce awarded a total of $2.5 million in initial credit certificates and $764,700 in final tax credits. A typical project in the first benefit year reported 12 jobs and qualified for a first benefit year tax credit of $33,990.

Assuming the companies maintain a constant number of positions, companies will typically receive a tax credit of $339,800 over the 10-year benefit period, which is more generous than most State employment tax credits. DLS found that most income tax credits have been awarded to large, established corporations. Two companies received 40% of all credits, and the seven companies that received a tax credit of at least $100,000 account for two-thirds of all tax credit awards.

DLS identified several challenges and recommendations related to the program.

- ***Program Overlaps with Other Tax Credit Programs:*** The State and federal government have several similar tax incentive programs that aim to promote economic development and job creation within economically distressed areas. DLS recommends that the General Assembly require Commerce and the Maryland Department of Labor to submit a report on consolidating specified State tax credits.

- ***Program Will Mandate Significant Future Funding:*** The More Jobs for Marylanders income tax credit and sales and use tax refund are subject to an annual appropriation. In addition, Commerce may, in each fiscal year, award a maximum of $10.0 million in tax credits – $9.0 million in income tax credits and $1.0 million in sales and use tax refunds. However, each new applicant is entitled to a 10-year tax benefit, creating unfunded liabilities that will require future year appropriations. At the time of the evaluation, Commerce projected that, by fiscal 2024, the required annual income tax appropriation will be slightly over $20.0 million and, through fiscal 2024, a total of $55.2 million will be appropriated for the incentive. These appropriations only reflect applications received through October 2020 and largely do not reflect the program's recent expansion for eligible businesses located within federal opportunity zones. To address the long-term funding mandated by the program in future years, DLS recommended that the General Assembly consider statutory changes to reduce the program's fiscal cost, including by reducing the income tax credit's value and the number of years the credit may be claimed for future applicants, and by further restricting eligibility to certain businesses. In addition, DLS further recommended that the General Assembly consider allowing the program to terminate on its current June 20, 2022 termination date.

- ***Program Geographic Designations and Incentives Are Overly Complicated:*** The More Jobs for Marylanders Program has multiple geographic eligibility standards: Tier I counties that qualify under unemployment/income standards; three additional Tier I counties designated by Commerce; and Tier I areas designated as federal opportunity zones. The program also has different eligibility standards for new and existing businesses and for different types of businesses. These requirements are more complicated and in some instances are inconsistent with similar State tax credit programs. DLS recommended reducing the program's complexity by eliminating the program's Tier I and Tier II designations and the additional sales and use tax refund, State property tax credit, and waiver of corporate filing fees available to new businesses.
- ***Smaller-sized Businesses Are Underrepresented in the Program:*** Although most More Jobs for Marylanders income tax credits have been awarded to large, established

corporations, the program has attracted greater small business participation compared to other tax credits that have been evaluated by DLS. Given the General Assembly's interest in supporting small businesses and the lack of small business participation in most other State tax credit programs, DLS recommended the More Jobs for Marylanders Program specifically focus on smaller employers. This could improve the program's effectiveness by reducing its overlap with existing tax credit programs.

For further information contact: Robert.Rehrmann@mlis.state.md.us/Heather.MacDonagh@mlis.state.md.us

Revenues and Taxes

Casino Gaming Revenue

On March 15, 2020, due to the spread of COVID-19, Governor Lawrence J. Hogan, Jr. issued an executive order requiring the closure of all six casinos in the State. As a result, casino revenues decreased 27.3% in fiscal 2020 from the previous year. Fiscal 2021 revenues have nearly recovered to fiscal 2019 revenue levels. In fiscal 2021, Maryland's casinos generated $1.75 billion in gaming revenue, which is only 0.9% less than the $1.76 billion generated during fiscal 2019.

Video Lottery Terminals and Table Games in Maryland

There are six casinos operating in Baltimore City and Allegany, Anne Arundel, Cecil, Prince George's, and Worcester counties. The facility in Prince George's County is the newest casino in Maryland, having opened in December 2016. **Exhibit 1** shows the number of video lottery terminals (VLT) and table games in operation at each facility as of September 30, 2021.

Exhibit 1
VLTs and Table Games in Operation by Facility
As of September 30, 2021

Facility	VLTs	Table Games
Allegany	651	16
Anne Arundel	3,747	190
Baltimore City	1,519	137
Cecil	728	18
Prince George's	2,123	199
Worcester	842	18
Total	**9,610**	**578**

VLT: video lottery terminal

Source: State Lottery and Gaming Control Commission

Effect of COVID-19 on Casinos

On March 15, 2020, as part of the State's effort to stop the spread of COVID-19, Governor Lawrence J. Hogan, Jr. issued an executive order requiring the closure of all six casinos. The casinos temporarily suspended their operations on March 16 and did not reopen until late June 2020. Upon reopening, Maryland's casinos operated at 50% capacity for nearly nine months of fiscal 2021 due to COVID-19. MGM National Harbor, Live! Casino & Hotel, and Horseshoe Casino were limited to 25% capacity for portions of fiscal 2021. By June 17, 2021, capacity restrictions had been lifted at all six casinos, but some slot machine and table game seats could not be occupied because casinos have continued to comply with social distancing guidelines.

Casino revenues were down 27.3% in fiscal 2020 from the previous year, but fiscal 2021 revenues have since nearly recovered to fiscal 2019 revenue levels. In fiscal 2021, Maryland's casinos generated $1.75 billion in overall gaming revenue, which is only 0.9% less than the $1.76 billion generated during fiscal 2019. At the same time, the casinos generated a record-setting contribution to the State of $731.0 million in fiscal 2021, which was a 1.0% increase from the State contributions in fiscal 2019. This was the result of slightly stronger VLT revenues in fiscal 2021 of which the State receives a larger percentage than revenues from table games.

VLT and Table Game Revenues

Exhibit 2 shows actual and anticipated gross VLT and table game revenues in Maryland for fiscal 2015 through 2023, not including one-time initial license fees, by facility. **Exhibit 3** shows the same revenues, not including one-time initial license fees, by fund.

Exhibit 2
Gross Gaming Revenues Generated by Facility
Fiscal 2015-2023 Est.
($ in Millions)

	2015	2016	2017	2018	2019	2020	2021	Est. 2022	Est. 2023
VLTs									
Allegany	$38.0	$41.3	$45.1	$46.5	$48.9	$36.8	$53.4	$54.8	$55.6
Anne Arundel	391.8	408.8	371.9	369.5	411.8	315.8	432.7	466.8	473.8
Baltimore City	131.9	168.3	168.7	156.3	144.6	96.4	137.4	138.8	139.5
Cecil	66.1	65.7	63.1	64.9	65.2	48.2	75.4	76.2	76.9
Prince George's			177.5	345.3	384.8	279.4	386.6	416.5	424.8
Worcester	53.1	57.6	59.6	64.1	69.8	52.6	75.0	77.1	78.3
Total VLTs	**$681.0**	**$741.7**	**$885.9**	**$1,046.7**	**$1,125.1**	**$829.3**	**$1,160.4**	**$1,230.2**	**$1,248.9**
Table Games									
Allegany	$6.6	$6.6	$7.60	$7.6	$7.2	$5.6	$7.2	$7.4	$7.4
Anne Arundel	233.8	242	219.8	190.1	177.6	133.7	189.8	192.1	198.9
Baltimore City	104.1	142.1	135.3	110.8	105.6	65.8	62.2	66.9	68.2
Cecil	11.9	11.6	11.3	10.4	9.6	7.6	11.1	11.4	11.4
Prince George's			160.9	310	326.6	231.5	305.6	316.4	326.2
Worcester				3.3	8.6	6.5	9.4	10.0	10.3
Total Table Games	**$356.4**	**$402.3**	**$535.1**	**$632.3**	**$635.2**	**$450.7**	**$585.3**	**$604.3**	**$622.5**
Total VLT and Table Games	**$1,037.4**	**$1,144.0**	**$1,420.9**	**$1,679.0**	**$1,760.4**	**$1,280.0**	**$1,745.7**	**$1,834.5**	**$1,871.4**

VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Exhibit 3
Gross Gaming Revenues Generated by Fund
Fiscal 2015-2023 Est.
($ in Millions)

	2015	2016	2017	2018	2019	2020	2021	Est. 2022	Est. 2023
VLTs									
ETF	$316.1	$322.0	$361.7	$401.8	$447.4	$329.2	$443.6	$470.2	$477.4
Lottery Operations	11.9	7.8	9.3	10.5	11.2	8.3	11.6	12.3	12.5
Purse Dedication Account	46	50.1	54.6	61.2	65.9	48.5	67.8	71.9	73.0
Racetrack Renewal Account	7.1	7	8.4	10.0	10.8	7.9	11.1	11.8	11.9
Local Impact Grants	36.4	39.7	47.5	56.8	61.1	45.0	62.9	66.7	67.7
Business Investment	9.9	10.8	12.9	0	0	0	17.0	18.0	18.3
General Fund	0	0	0	15.3	0	0	0	0	0
Licensees	253.6	304.3	391.3	491.0	528.8	390.3	546.5	579.3	588.1
Total VLTs	**$681.0**	**$741.7**	**$885.9**	**$1,046.7**	**$1,125.2**	**$829.3**	**$1,160.4**	**$1,230.2**	**$1,248.9**
Table Games									
ETF	$71.3	$80.5	$89.5	$94.8	$95.3	$67.6	$87.8	$90.6	$93.4
Local Impact Grants	0	0	17.6	31.6	31.8	22.5	29.3	30.2	31.1
Licensees	285.1	321.8	428.1	505.8	508.2	360.6	468.3	483.4	498.0
Total Table Games	**$356.4**	**$402.3**	**$535.1**	**$632.3**	**$635.2**	**$450.7**	**$585.3**	**$604.3**	**$622.5**
Total VLT and Table Games	**$1,037.4**	**$1,143.9**	**$1,420.9**	**$1,679.0**	**$1,760.4**	**$1,280.0**	**$1,745.7**	**$1,834.5**	**$1,871.4**
ETF	**$387.4**	**$402.5**	**$451.2**	**$496.7**	**$542.7**	**$396.8**	**$531.4**	**$560.8**	**$570.7**

ETF: Education Trust Fund
VLT: video lottery terminal

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

For further information contact: Heather.MacDonagh@mlis.state.md.us

Revenues and Taxes

Implementation of Sports Wagering

Voters authorized sports and event wagering at the November 2020 general election. During the 2021 legislative session, the General Assembly established the operational and regulatory framework for the State's sports wagering program. In October 2021, the State Lottery and Gaming Control Commission qualified five applicants for sports wagering facility licenses. The Sports Wagering Application Review Commission must also officially award the licenses before the applicants may start offering sports and event wagering.

Sports Wagering Legislation

Two pieces of sports wagering legislation passed during the 2020 and 2021 sessions. Chapter 492 of 2020 was a constitutional amendment approved by the voters at the November 2020 general election that authorized sports and event wagering, contingent upon implementation legislation passed by the General Assembly. Chapter 356 of 2021 established the operational and regulatory framework for the State's sports wagering program.

Under Chapter 356, the State Lottery and Gaming Control Commission (SLGCC) is required to generally regulate sports wagering to the same extent that it regulates the operation of video lottery terminals and table games in the State. Sports wagering licenses will be awarded by the Sports Wagering Application Review Commission (SWARC), the members of which were appointed by the Governor, the President of the Senate, and the Speaker of the House.

On award of a license by SWARC, SLGCC must issue a license to an applicant that meets the requirements for licensure. There are 13 Class A and 7 Class B sports wagering facility licensees designated under the law, all of which are identified in **Exhibit 1**. Class B-2 licenses are reserved for applicants with less than (1) 25 employees or (2) $3,000,000 in annual gross receipts. A sports wagering facility licensee may accept wagers made by an individual physically present on the licensee's property, including wagers on a self-service kiosk, device, or machine on the property.

Exhibit 1
Designated Sports Wagering Facility Licensees

License	Application Fee	Designated Licensees
Class A-1	$2,000,000	• Three video lottery facilities – Live! in Anne Arundel County, Horseshoe in Baltimore City, and MGM National Harbor in Prince George's County • Three professional sports stadiums/teams – M&T Bank Stadium and Oriole Park in Baltimore City, and FedEx Field in Prince George's County • Owner of a professional hockey, basketball, or soccer franchise that leases a stadium in Maryland
Class A-2	$1,000,000	• Three video lottery facilities – Rocky Gap in Allegany County, Hollywood in Cecil County, and Ocean Downs in Worcester County • Maryland Jockey Club (operator of Laurel Park and Pimlico racecourses)
Class B	B-1: $250,000 B-2: $50,000	• Maryland State Fairgrounds • Four off-track betting locations – Greenmount Station in Carroll County, Riverboat on the Potomac in Charles County, Long Shot's in Frederick County, and Jockey Bar and Grille in Washington County • Two commercial bingo facilities with at least 200 machines – Bingo World in Anne Arundel County and Rod 'N' Reel in Calvert County

Source: Department of Legislative Services

Applicants may also compete for an additional 30 Class B-1 or B-2 facility licenses and 60 mobile sports wagering licenses. Mobile license applicants must pay a $500,000 application fee. Mobile wagers are restricted to individuals physically located in the State. SWARC must actively seek to achieve racial, ethnic, and gender diversity when awarding Class B facility and mobile licenses and encourage small, minority, and women-owned businesses to apply. Finally, SWARC may not award a license for a location within (1) a 15-mile radius of a Class A-1 or A-2 sports wagering facility located in Allegany, Cecil, or Worcester counties; or (2) a 1.5-mile radius of a Class A or B licensee located outside of Allegany, Cecil, or Worcester counties.

Licensees retain 85% of sports wagering proceeds, with the remainder distributed to the Blueprint for Maryland's Future Fund. Revenues accruing to the Blueprint for Maryland's Future Fund are to be used to provide a world-class education for early childhood and K-12 students so that they are prepared for college and a career in the global economy. Certain other revenues are distributed to the Problem Gambling Fund and the newly established Small, Minority-Owned, and Women-Owned Business Sports Wagering Assistance Fund, the purpose of which is to provide grants or loans to small, minority-owned, and women-owned businesses to facilitate participation in the sports wagering industry. Based on sports wagering revenues in surrounding states, the Department of Legislative Services estimates that revenues from sports wagering could total 5% of overall gaming revenues in the State on an annual basis.

SLGCC Regulations

Emergency sports wagering regulations proposed by SLGCC were approved by the Joint Committee on Administrative, Executive, and Legislative Review on July 19, 2021. The 30-day public comment period for the proposed regulations closed on September 27, 2021.

Sports Wagering License Applications

Chapter 356 requires SLGCC to qualify an applicant before a license may be awarded by SWARC, to include conducting background investigations of the applicants and their principals. On September 16, 2021, SLGCC began accepting applications for sports wagering facility licenses. At its meetings on October 6 and October 21, SLGCC approved alternative licensing standards, effectively expediting the qualification process, for five applicants that currently hold Maryland gaming licenses: Live! Casino in Anne Arundel County; Horseshoe Casino in Baltimore City; MGM National Harbor in Prince George's County; Hollywood Casino in Cecil County; and Ocean Downs Casino in Worcester County. SWARC's approval of sports wagering facility licenses for these applicants is still pending.

Sports Wagering in Surrounding States

Sports wagering is live in each of Maryland's surrounding states as well as the District of Columbia. Delaware, Pennsylvania, and West Virginia have had a three-year head start; and operations in those states are well underway. Virginia, which launched its first mobile application in January, has already reported over $1.6 billion in handle. **Exhibit 2** shows how the surrounding states have structured their sports wagering operations and the revenues generated since going live.

Exhibit 2
Sports Wagering in Surrounding States

State	First Bet Placed	Tax Rate	Active Betting Locations	Mobile Betting	Sportsbook Data (Launch Date through August 2021)
Delaware	6/5/18	59.8%-60.2% (includes % for race purses)	Racetracks (3)	No	Handle[3] – $300,414,223 Revenue[4] – $36,480,896 State Share – $21,827,679
West Virginia	8/30/18	10%	Racetracks (5) and the private club at Greenbriar	Yes	Handle – $947,002,416 Revenue – $76,368,328 State Share – $7,653,758
Pennsylvania	11/17/18	36% (includes a 2% local share)	Casinos and racetracks (17)	Yes	Handle – $8,772,953,632 Revenue – $483,970,167 State Share – $174,274,240
Washington, DC	5/8/20	10%	Capital One Arena and Nationals Park[1]	Yes	Handle – $196,143,529 Revenue – $29,135,211 State Share – $2,100,767
Virginia	1/21/21	15%	Online only[2]	Yes	Handle – $1,671,400,854 Revenue – $144,953,879 State Share – $11,074,023

[1] Betting locations authorized in Washington, DC but not yet active include lottery retailers, private sports betting facilities, Audi Field, and St. Elizabeth's East Entertainment and Sports Arena.
[2] Betting locations authorized in Virginia but not yet active include five unbuilt casinos, two auto racing tracks, and a professional football stadium (if the Washington Football Team relocates from Maryland to Virginia).
[3] Handle is the total amount of all wagers.
[4] Revenue is gross gaming revenue (handle minus total win) minus various payouts (*e.g.*, promotional credits, excise taxes, vendor fees) to arrive at "taxable" revenue.

Source: Department of Legislative Services

Personnel

State and Retiree Health Plan

A faster than expected rebound in medical drug costs following the COVID-19 pandemic has put upward pressure on employer and employee contributions to the State's health insurance account. Employee premiums will increase by 5% for health insurance and 10% for prescription drug plans in calendar 2022. The implementation of legislation transitioning prescription drug coverage for Medicare-eligible retirees remains delayed, with the earliest possible effective date being January 1, 2023.

Plan Offerings

The State offers an array of health benefits, including medical, behavioral, vision, prescription drug, dental, life, and accidental death and dismemberment insurance. State employees may choose among three types of medical plans: a Preferred Provider Organization (PPO) that utilizes a national network and provides both in- and out-of-network benefits; an Exclusive Provider Organization (EPO) that also utilizes a national network but provides in-network benefits only; and an Integrated Health Model that utilizes a regional network.

EPO plans have the most members as of June 2021 with 64,658 members, or 52.8%, of plan membership. Migration to EPO plans started when the State introduced coinsurance payments for PPO and point-of-service (POS) plans in 2012, requiring those members to pay a percentage of out-of-network costs and certain in-network costs.[1] EPO membership includes predominately active State employees (62% of membership), while PPO plan membership consists primarily of retirees (53% of membership). One reason active State employees may choose EPO plans is the attractiveness of lower premiums; the State's cost-share ratio for an EPO plan is 85/15, with the member paying 15% of the premium cost, while the cost-share ratio for a PPO plan is 80/20, reflecting the fact that EPO plans are less expensive due to the State not having to pay out-of-network claims. PPO plans may be more attractive to State retirees, who often have more health care needs and appreciate the flexibility of PPO plans for out-of-network services.

Medical Spending Trends

The State closed fiscal 2021 with a $43.4 million surplus in the health insurance account, lower than the $71.9 million in estimated incurred but not received claims. Overall, fiscal 2021 medical spending grew by 7.2%, after being nearly flat in fiscal 2020. In fiscal 2021, prescription drug costs (including rebate revenue) increased by 1.9%, which is below historic levels.

[1] POS plans were discontinued in fiscal 2015 except for State Law Enforcement Officer Labor Alliance members.

Prescription drug spending was not impacted by the pandemic, unlike medical and dental spending. After an 8.1% decrease in fiscal 2020, dental spending increased by 11.8% in fiscal 2021.

Spending Outlook

While the COVID-19 pandemic dramatically reduced medical and dental spending in the last quarter of fiscal 2020, spending returned to prepandemic levels by the second quarter of fiscal 2021. Fiscal 2021 spending resulted in higher than anticipated costs, likely necessitating a deficiency appropriation in fiscal 2022 to maintain the health insurance account's balance. The Department of Legislative Services expects a 5.5% increase in health care spending in fiscal 2022 and beyond. In addition to the deficiency appropriation, there will be a 5% increase in medical premium payments, a 10% increase in prescription drug premium payments, and a 5% increase in dental premium payments in calendar 2022. Based on cost trends, it is likely that another increase will be necessary in calendar 2023.

Continued Delay in Transition of State Retiree Prescription Drug Coverage to Medicare Part D

Chapter 397 of 2011 eliminated State prescription drug coverage for Medicare-eligible retirees beginning in fiscal 2020, with the intent of reducing the State's significant financial liabilities associated with Other Post Employment Benefits. In response to the federal Bipartisan Budget Act of 2018 that accelerated the closing of the Medicare Part D coverage gap (also known as the "donut hole") to January 1, 2019, the General Assembly passed legislation (Chapter 10 of 2018) to realign the transition of retirees to Medicare Part D to the new date, with the additional clarification of continuing coverage to non-Medicare-eligible spouses and dependents of Medicare-eligible retirees.

In September 2018, a lawsuit was filed in the Baltimore City Circuit Court to challenge the planned transition beginning in January 2019. In October 2018, a federal judge granted a temporary restraining order and preliminary injunction to delay the transition to Medicare Part D, pending a decision on the lawsuit. During the 2019 session, Chapter 767 was passed to establish prescription drug out-of-pocket reimbursement or catastrophic coverage programs for specified Medicare-eligible State retirees or dependents. However, Chapter 767 delays implementation of the three plans while the injunction is pending and requires that there be at least nine months before open enrollment before Chapter 767 is implemented. These provisions mean that the earliest date on which Chapter 767 would be implemented is January 1, 2023.

For further information contact: Jason.Kramer@mlis.state.md.us

State Retirement and Pension System Investment Performance and Contribution Rates

The pension fund's fiscal 2021 return on investment was 26.7%, exceeding the assumed rate of return of 7.4%. The plan's funded status increased to 76.2%, compared to 72.9% at the end of fiscal 2020. State law requires that supplemental contributions of $75 million continue until the system is 85% funded and includes a pension sweeper provision that will direct a portion of unspent State general fund balances to the system.

Fiscal 2021 Investment Performance

The State Retirement and Pension System's (SRPS) investment return for the fiscal year that ended on June 30, 2021, was 26.7%, exceeding the assumed rate of return of 7.4% in effect for that year. System assets grew by $13.1 billion to a market value of $67.9 billion as of June 30, 2021. Investment returns have exceeded the assumed rate of return in 3 of the last 5 years. The system as a whole outperformed its policy benchmark by 2.27% (227 basis points). The 5-year weighted average annual return as of June 30, 2021, is 10.7%, which is 0.48% (48 basis points) above the plan return benchmark for that period. The weighted average annual return for the past 10 years is 8.2%, which is 0.61% (61 basis points) above its benchmark for that period. Both the 5-year and 10-year averages also exceed the system's 7.4% assumed rate of return.

System's Financial Condition Driven by Investment Returns and Policy Changes

SRPS's funded status (the ratio of projected actuarial assets to projected actuarial liabilities) improved from 72.9% at the end of fiscal 2020 to 76.2% at the end of fiscal 2021. (These figures exclude funding for local governments that participate in the State plan.) In addition to the system's improved investment performance, the system has also benefited from reforms. The reformed benefit structure enacted in 2011 increased employee contributions, added additional caps to cost-of-living adjustments earned after 2011, increased the vesting period and reduced the multiplier for employees hired after 2011, and appropriated a share of savings as supplemental contributions. The State also eliminated the corridor funding method. From fiscal 2020 to 2021, the total State unfunded liability decreased from $19.1 billion to $17.9 billion.

Fiscal 2023 Contribution Rates

Exhibit 1 shows that the fiscal 2023 employer contribution rates with reinvestment savings are relatively stable when compared with the fiscal 2022 rates. The aggregate contribution rate for all systems increases from 18.18% in fiscal 2022 to 18.21% in fiscal 2023. Based on projected payroll growth and other factors, the SRPS actuary estimates that total employer pension contributions will increase by $39 million, from $2.106 billion in fiscal 2022 to $2.145 billion in fiscal 2023. The funding levels and contribution amounts include the $75 million supplemental contribution required by Chapter 489 of 2015 but not the pension sweeper as required by Section 7-311 (j) of the State Finance and Procurement Article. The fiscal 2023 contribution rates are the actuarially determined contribution (ADC) rates and reflect an investment return assumption of 6.8% adopted by the SRPS board for the current fiscal year.

Exhibit 1
State Pension Contributions
Fiscal 2022 and 2023 Projected
($ in Millions)

	2022		2023 Projected	
Plan	**Rate**	**Contribution**	**Rate**	**Contribution**
Teachers' Combined	15.33%	$1,184.0	15.29%	$1,208.2
Employees' Combined	21.12%	751.6	21.30%	759.9
State Police	76.16%	92.8	77.30%	95.9
Judges	41.92%	22.8	40.02%	21.7
Law Enforcement Officers	43.18%	55.3	45.62%	59.5
Aggregate	**18.18%**	**$2,106.4**	**18.21%**	**$2,145.2**

Note: Except for the Teachers' Combined System (TCS), contribution rates and dollar amounts reflect State funds only, excluding municipal contributions. For TCS, they reflect the combined total of State and local contributions. Figures also reflect the $75 million supplemental contribution required by Chapter 489 of 2015.

Source: Gabriel, Roeder, Smith, & Co., Results of the June 30, 2021, Actuarial Valuation for Fiscal Year 2023

Employer contribution rates were subject to multiple influences this year, some exerting upward pressure, and others exerting downward pressure. The record investment returns for fiscal 2021 and the recognition of 40% of those gains (instead of 20%) work to balance a reduction in the assumed rate of return to 6.8%, resulting in the relatively stable fiscal 2023 contribution rates. Increased membership under the reformed benefit structure will continue to exert downward pressure on the rates.

In addition to the ADC, the State also provides supplemental contributions. Chapter 489 provides for a supplemental reinvestment contribution of $75 million each year until the system is 85% funded. Additionally, Chapter 557 of 2017 altered a sweeper provision to direct a portion of unspent general funds to the system as an additional supplemental payment in fiscal 2021 and subsequent years. This sweeper provision requires the Administration to include up to $25 million of unspent funds as an additional appropriation for State pension contributions beginning in fiscal 2022.

Local School Board Contributions to the Teachers' Pension System

Local school boards are required to make contributions for members of the Teachers' Retirement and Pension systems (TRS/TPS). The contribution amounts are the amounts associated with the normal cost for local employees in TRS/TPS. The normal cost is the portion of the yearly contribution rate that reflects the amount needed to fund liabilities that will be accrued in the upcoming year. The employer share of the normal cost rate for fiscal 2023 is 5.12%, and the system's actuary projects the local school board normal cost share for fiscal 2023 to be $373 million. In fiscal 2022, the normal cost rate is 4.17%, resulting in $296.5 million in local school board contributions. Thus, local normal cost contributions are projected to increase by $76.5 million.

The increase in the normal cost for fiscal 2023 is largely attributable to the system's reduction in the assumed rate of investment returns from 7.4% to 6.8%. Under a lower assumed rate of return, normal cost contributions are expected to experience slower investment growth over time, necessitating a higher initial normal cost contribution. As employees turn over and are replaced with individuals enrolled in the Reformed Contributory Pension Benefit, the normal cost rate should trend downward, consistent with prior experience.

The system's actuary projects that the total State contribution to the Teachers' Combined System for fiscal 2023 will be $835.2 million, which consists of $31.6 million of the normal cost,[2] $752.8 million for unfunded liabilities, and $50.8 million in supplemental contributions.

For further information contact: Phillip.Anthony@mlis.state.md.us

[2] The State continues to be responsible for paying the normal cost for certain TRS/TPS covered employees, such as library employees and employees of educational institutions supported and/or operated by the State (generally State universities and local community colleges).

Personnel

Pension Amortization Policy

The current closed amortization policy for the State Retirement and Pension System is scheduled to end in fiscal 2038. State contribution rates are expected to become more volatile in the final years of the current amortization period, requiring an evaluation and recommendation for changes to the amortization policy.

Retirement System Board Recommends Change to Amortization Policy

In September 2021, the Board of Trustees of the State Retirement and Pension System (SRPS) voted to recommend a change to the existing policy for amortizing gains and losses to its liabilities. As the current amortization policy is in statute, any change would require legislative action. The rationale for the board's recommendation is that the current policy may make State pension contribution rates more volatile as the current closed amortization, scheduled to end in fiscal 2038, approaches its final years. The board considered at least four different amortization policies, ultimately choosing to recommend one that leaves current liabilities unchanged but takes a different approach as to future liabilities that accrue on or after July 1, 2023. This paper examines the benefits and disadvantages of the changes recommended by the board and identifies an alternative approach.

Amortization Policy Smooths Liabilities Over Time

Funding models for public pension plans seek to set aside sufficient funding during a member's working life to pay for retirement benefits paid to that member at a future date. As such, funding models must project future benefit costs and the assets available to pay for them using assumptions about employees' behavior (*e.g.*, age at retirement) and economic performance (*e.g.*, real return on investments) to calculate a sufficient amount to contribute annually to the pension fund.

Sources of Pension Liability Volatility

Pension funds generate liabilities from four major sources:

- ***Experience Gains and Losses:*** When actual experience (investment returns, retirement rates, *etc.*) differs from the assumptions used to calculate annual contributions;

- ***Assumption Changes:*** When the assumptions used to calculate employer contributions are changed;

- ***Method Changes:*** When the methods used to calculate future pension unfunded liabilities are changed; and

- ***Benefit Changes:*** When plan sponsors change benefits earned by covered employees (either prospectively or retroactively).

As pension benefits are paid over time, the pension system is able to amortize those liabilities over time; the plan sponsor is then responsible for making additional annual amortization payments to pay down the liabilities.

Current Amortization Policy

The current amortization policy, enacted by Chapters 475 and 476 of 2013, returned the system's funding policy back to full actuarial funding (by eliminating the corridor funding method), and addressed a looming spike in employer contribution rates prompted by the amortization policy in place as well as losses realized during the Great Recession. The termination of an amortized surplus, scheduled for fiscal 2020, would have caused contribution rates across all SRPS plans to spike, with the effect most pronounced for the State Police Retirement System. The current policy amortizes all liabilities, *regardless of source*, over a closed 25-year period, which eliminated the looming spikes in contribution rates under the prior policy. However, it also means that all future gains and losses are amortized over fewer and fewer years until the end of the 25-year period in 2038, creating the potential for volatility in State liability payments. For example, if the system experiences substantial actuarial losses during fiscal 2033, those losses would be amortized over just five years, which could potentially cause State contributions to spike to unaffordable levels. Therefore, action is warranted to address the potential volatility of the current amortization policy.

Alternatives Studied by SRPS Board

To mitigate the potential volatility of the current amortization policy, the SRPS board appointed an *ad hoc* committee to study alternative models. The committee reviewed four alternatives put forth by the system's actuary based on guidelines developed by the Conference of Consulting Actuaries (CCA). All four alternatives distinguish among the main sources of new liabilities, which the current policy does not do. Three of the four alternatives retain the current closed amortization for existing liabilities, with any changes applying only to liabilities incurred on or after July 1, 2023; Alternative 4 incorporates existing liabilities into a rolling 15-year amortization period. The four alternatives are summarized in **Exhibit 1**.

Exhibit 1
Alternative Amortization Policies

	Alternative 1	Alternative 2	Alternative 3	Alternative 4
Current Liabilities	Continue Closed 25 Years	Continue Closed 25 Years	Continue Closed 25 Years	Rolling 15 Years, Pooled
Gains or Losses	Closed 15 Years, Layered	Rolling 15 Years, Pooled	Rolling 15 Years, Pooled	Rolling 15 Years, Pooled
Assumption/Method Changes	Closed 25 Years, Layered	Closed 25 Years, Layered	Rolling 15 Years, Pooled	Rolling 15 Years, Pooled
Benefit Changes	10-15 Years, Layered	10-15 Years, Layered	10-15 Years, Layered	10-15 Years, Layered
Early Retirement Incentives	Closed 5 Years	Closed 5 Years	Closed 5 Years	Closed 5 Years

Source: Gabriel, Roeder, Smith & Company; Department of Legislative Services

Alternative 1 is deemed a "model practice" by CCA, whereas the other three alternatives are deemed "acceptable with conditions." The SRPS board voted to recommend adoption of Alternative 2, which was supported by its actuary. In its presentation to the board, the system's actuary advised that Alternative 1's use of closed layers for gains and losses would expose the system to "scheduled volatility" as the various layers terminate, whereas the use of rolling amortization periods would mitigate any such volatility.

Policy Options Merit Further Consideration

The key difference between Alternative 1, the model policy, and Alternative 2, the policy recommended by the SRPS board, is the amortization of gains and losses. Under the model policy, gains and losses in a given year are amortized over a *closed* 15-year period. This creates a series of amortization "layers," with each year's gains and losses amortized separately. After 15 years, the Year 1 gains or losses are fully amortized; after 16 years, the Year 2 gains or losses are fully amortized; *etc.* This resembles the amortization policy in place prior to Chapters 475 and 476, which contributed to the looming spike in contribution rates at the time. For this reason, the system's actuary recommends against using the model policy. As noted above, the use of a 15-year *rolling*, pooled amortization approach in Alternative 2 mitigates the potential for volatility but carries a different disadvantage. Under the rolling, pooled amortization period, unfunded liabilities are reset every year so that the system does not approach full funding.

Both the system's actuary and the General Assembly's consulting actuary have advised that the potential volatility of the model policy can be addressed through active management of the different amortization layers. As the different layers are created, authority to actively manage them can offset gains in one year with losses in another, thereby minimizing the potential for any one layer to create volatility.

Because Alternative 1 is the only option identified as a model policy by CCA and its adoption may address issues with approaching full funding compared to the board's recommended policy, the General Assembly may want to give further consideration to the strengths and weaknesses of any new amortization policy.

Education

State Education Aid and Blueprint for Maryland's Future Fund

State education aid is projected to increase significantly in fiscal 2023, primarily as a result of substantial funding increases under the Blueprint for Maryland's Future and projected enrollment increases. Fall 2021 enrollment counts will not be available until December and will provide more information on whether enrollments have rebounded from the impact that COVID-19 and remote learning had on public school enrollment in the 2020-2021 school year. The Blueprint for Maryland's Future Fund is projected to have sufficient revenues to cover both State and non-State aid increases attributable to the Blueprint for Maryland's Future law through at least fiscal 2026.

Direct Aid for State Public Schools Projected to Increase by $580 Million

Public schools are expected to receive an estimated total of $8.0 billion in fiscal 2023, representing a 6.9% increase over the prior fiscal year. This increase is primarily comprised of aid that flows directly to local school systems that is expected to increase by $579.6 million (8.6%). This increase is largely due to projected enrollment increases and significant increases in per pupil funding amounts for major aid programs and several new aid programs under the Blueprint for Maryland's Future. Due to the Governor's veto of House Bill 1300 of 2020, funding for programs in the Blueprint for Maryland's Future – Implementation bill was not mandated in fiscal 2022, so fiscal 2023 is the first year of significant increases under the Blueprint. These increases are offset by the assumed discontinuation of federal COVID-19 relief funding ($211.6 million in fiscal 2022) and of discretionary State hold harmless grants ($209.4 million in fiscal 2022) that were provided to make up for lower enrollment in the 2020-2021 school year due to the COVID-19 pandemic. Fall enrollment counts for this school year (2021-2022) will not be available until December; it remains to be seen whether enrollment counts have rebounded as schools have reopened to in-person learning.

Blueprint Implementation and Enrollment Drive Aid Increases

Exhibit 1 provides estimated State aid for education in fiscal 2022 and 2023. Due to the implementation of House Bill 1300 of 2020 (Chapter 36 of 2021), Blueprint for Maryland's Future – Implementation, and revisions made to the law in House Bill 1372 of 2021 (Chapter 55), in fiscal 2023, Foundation formula funding is estimated to increase by $534.3 million (16.8%). This increase is largely due to projected enrollment increases and the first year of a substantial increase in the per pupil foundation amount under the Blueprint legislation, from $7,390 per student in fiscal 2022 to $8,310 per student in fiscal 2023 (12.4%). Estimated enrollment for fiscal 2023 uses pre-COVID full-time equivalent (FTE) enrollment projections for fall 2021, resulting in an increase of 3.8% over fall 2020 enrollments that actually decreased by 2.2% compared to fall 2019.

Chapter 36 also alters the student count to be funded under the program to use either the greater of the FTE enrollment or the three-year moving average FTE enrollment.

Exhibit 1
Estimated State Aid for Education
Fiscal 2022-2023
($ in Millions)

Program	2022	2023	$ Change	% Change
Foundation Program	$3,170.7	$3,705.0	$534.3	16.8%
Geographic Cost of Education Index	147.7	157.9	10.2	6.9%
Net Taxable Income Grant	47.2	0.0	-47.2	-100.0%
Supplemental Grant	46.6	0.0	-46.6	-100.0%
Tax Increment Financing Grant	1.0	0.0	-1.0	-100.0%
Compensatory Education Program	1,286.7	1,438.2	151.5	11.8%
Special Education – Formula Aid	311.1	421.4	110.3	35.5%
Special Education – Nonpublic Placements	127.0	131.3	4.3	3.4%
English Language Learners	334.3	419.7	85.4	25.5%
Guaranteed Tax Base	49.9	43.8	-6.0	-12.1%
Student Transportation	288.1	347.1	59.0	20.5%
Head Start/Prekindergarten Expansion	29.6	29.6	0.0	0.0%
Blueprint Hold Harmless Grant	209.4	0.0	-209.4	-100.0%
Blueprint Programs*	390.8	525.1	134.3	34.4%
Concentration of Poverty Grants	*116.9*	*182.6*	*65.7*	*56.2%*
Teacher Salary Incentives	*75.0*	*0*	*-75.0*	*-100.0%*
Transitional Supplemental Instruction	*23.0*	*46.0*	*23.0*	*100.0%*
Mental Health Services Coordinators	*2.0*	*0.0*	*-2.0*	*-100.0%*
Special Education Grants	*65.5*	*0.0*	*-65.5*	*-100.0%*
Prekindergarten Grants	*53.7*	*0.0*	*-53.7*	*-100.0%*
Early Education	*54.7*	*0.0*	*-54.7*	*-100.0%*
Full–day Prekindergarten	*0*	*75.9*	*75.9*	*n/a*
Career Ladder	*0*	*11.6*	*11.6*	*n/a*
College and Career Ready	*0*	*12.6*	*12.6*	*n/a*
Education Effort Adjustment	*0*	*138.7*	*138.7*	*n/a*
Transition Grants	*0*	*57.7*	*57.7*	*n/a*
COVID-19 Relief	211.6	0.0	-211.6	-100.0%
Other Education Programs	92.0	104.3	12.2	13.3%
Direct Aid Subtotal	***6,743.7***	***7,323.3***	***579.6***	***8.6%***
Teachers' Retirement	**779.0**	**716.9**	**-62.0**	**-8.0%**
Grand Total	**$7,522.7**	**$8,040.3**	**$517.6**	**6.9%**

*The Blueprint for Maryland's Future Fund covers funding for these programs and for portions of additional State aid and non-State aid programs.

Note: Figures may not sum due to rounding.

Source: Department of Legislative Services

Formula funding for compensatory education, special education, and English language learners also increases in fiscal 2023. As with the foundation formula, these formulas use projected pre-COVID enrollment. The inception of Blueprint per student formula increases results in significant per student funding under the special education and English language learners formulas. Special education formula funding is estimated to increase by $110.3 million (35.5%), from $311.1 million to $421.4 million; however, after accounting for $65.5 million of enhanced special education funding provided through a separate Blueprint program in fiscal 2020 to 2022 that is now incorporated into the special education formula, net funding increases $44.8 million (11.9%). English language learner funding increases by $85.4 million (25.5%), which reflects a per pupil funding increase and enrollment growth of 10.1%. Compensatory aid is estimated to increase by $151.5 million (11.8%), primarily due to growth in free and reduced-price meal student enrollment, which increases 8.3% to 375,830 students in 2021.

Due to low FTE enrollment and special education student transportation counts in fiscal 2022, transportation funding decreased dramatically (prior to the hold harmless grant). For fiscal 2023, estimated student transportation formula funding assumes pre-COVID enrollment levels and reflects high inflation (capped at 8% in statute), resulting in a 20.5% funding increase.

As part of Blueprint implementation, several State aid programs previously funded in the foundation program are not funded after fiscal 2022. These programs include the Net Taxable Income grant, Tax Increment Financing grant, and the supplemental grant program. Funding for COVID-19 relief (totaling $211.6 million in fiscal 2022) and for hold harmless grants (totaling $209.4 million in fiscal 2022) is also assumed not to continue in fiscal 2023. However, the Blueprint law adds several new aid programs starting in fiscal 2023 including (1) Education Effort Adjustment; (2) Transition Grants; (3) Career Ladder; (4) College and Career Readiness; and (5) Full-day Prekindergarten. These grants are included in the $525.1 million total in fiscal 2023 for Blueprint programs in Exhibit 1 which represents a $134.3 million (34.4%) increase over fiscal 2022.

State Retirement Costs Decrease; Local Contributions Increase

State retirement costs for public school teachers and other professional personnel will total an estimated $716.9 million in fiscal 2023, representing a $62.0 million (8.0%) decrease. This decrease is attributed to a decrease in the State employer pension contribution rate coupled with a significant increase in the normal cost rate, which determines the local share of costs, from 4.17% to 5.12%. This results in a slight decrease in the overall employer pension contribution rate, from 15.33% in fiscal 2022 to 15.29% in fiscal 2023. As local school systems are responsible for paying the normal cost (which represents the cost of pension benefits accrued in the current year), local pension contributions increase from an estimated $296.5 million in fiscal 2022 to $368.4 million in fiscal 2023. With total employer contributions for the Teachers' Combined System (TCS) projected to decrease, the substantial increase in local contributions means that the State contribution for TCS decreases.

Blueprint for Maryland's Future Fund

The Blueprint for Maryland's Future Fund is a special fund established to hold revenues dedicated to implementing the Blueprint legislation. The fund includes gaming revenues deposited in the Education Trust Fund (increasing from $375 million in fiscal 2022 to 100% of the revenues beginning in fiscal 2023) and sports betting revenues (beginning in fiscal 2022); sales tax revenues from marketplace facilitators and out-of-state vendors above $100 million and from digital downloads (beginning in fiscal 2022); federal funds for COVID-19 relief swapped with Blueprint special funds (in fiscal 2021 and 2022); and some one-time revenues. In fiscal 2022, Blueprint Fund revenues totaled $2.0 billion, including a starting balance of approximately $702 million. In fiscal 2023, revenues are projected to total approximately $2.3 billion, including over $500 million deposited from the Education Trust Fund.

In addition to State aid programs (discussed above and shown in Exhibit 1) funded by the Blueprint Fund, some non-State aid categorical programs also receive Blueprint funding. In fiscal 2022, non-State aid Blueprint programs receiving funds totaled $14.0 million and focused primarily on programs needed to facilitate Blueprint implementation, including the Accountability and Implementation Board ($4.8 million). In fiscal 2023, with the implementation of Chapter 36, non-State aid Blueprint programs total $110.0 million. These programs include the behavioral health community support consortium ($50.0 million), early childhood programs ($26.9 million), Blueprint implementation programs ($17.3 million), and teacher scholarships ($8.0 million).

As shown in **Exhibit 2**, in fiscal 2022, the Blueprint for Maryland Future Fund covers approximately $866 million in State aid and non-State aid expenditures and an ending fund balance of $1.1 billion. In fiscal 2023, approximately $1.0 billion in expenditures is covered by the fund with an ending fund balance of $1.35 billion headed into fiscal 2024. Based on current projections, the fund will have sufficient revenues to cover expenditures through fiscal 2026 and potentially longer depending on when digital advertising tax revenues begin to be collected.

Exhibit 2
Blueprint for Maryland's Future Fund Outlook
Fiscal 2022-2023
($ in Millions)

	2022	2023
Total Revenues Available	**$1,986**	**$2,302**
Blueprint for Maryland's Future – State aid	852	902
Blueprint for Maryland's Future – Non-State aid	14	110
Total Expenditures	**866**	**1,012**
Ending Fund Balance	**$1,119**	**$1,350**

Note: Figures may not sum due to rounding. Revenues do not include digital advertising tax revenues.

Source: Department of Legislative Services

Local Funding Requirements

The maintenance of effort (MOE) law requires each county government, including Baltimore City, to provide as much per pupil funding for the local school board as was provided in the prior fiscal year. In addition, through fiscal 2023, some county governments must increase per pupil funding due to the MOE escalator. Beginning with the fiscal 2022 local appropriation, the per pupil MOE level each year is based upon the greater of (1) the prior year FTE enrollment and (2) the three-year moving average of FTE enrollment. Under Chapter 55 of 2021, fall 2020 enrollment is excluded from this calculation to account for the effects of the COVID-19 pandemic on public school enrollment.

As of October 2021, the Maryland State Department of Education (MSDE) has certified that the school appropriations of 23 counties have met or exceeded the fiscal 2022 MOE requirement, and the certification for Baltimore City remains pending. In total, 8 counties (Anne Arundel, Baltimore, Carroll, Charles, Frederick, Harford, Howard, and St. Mary's) exceeded MOE by 1.0% or more. Current estimates suggest that as many as 8 jurisdictions will be below the statewide five-year moving average education effort level and may be subject to the MOE escalator in fiscal 2023. Preliminary estimates suggest that statewide per pupil local wealth will increase from fiscal 2022 to 2023. In fiscal 2022, 12 jurisdictions were required to increase their appropriations, ranging from 1.9% to the maximum 2.5% increase. MSDE must report by November 1, 2021, on the impact on school funding of the Chapter 36 repeal of the MOE escalator requirement.

Under the Blueprint law, beginning in fiscal 2023, counties are required to provide the *greater of* the per pupil MOE and the combined local share of multiple major aid programs. For some counties, this new effort requirement will exceed the per pupil MOE requirement. Finally, under Chapter 55 of 2021, the Department of Legislative Services must conduct a study by January 1, 2022, on the local fiscal impact of implementing the Blueprint and the capacity of counties to provide the projected increases in local appropriations to meet future local effort requirements.

For further information contact: Scott.Gates@mlis.state.md.us

Education

Blueprint for Maryland's Future

Implementation of the Blueprint for Maryland's Future (Blueprint) was delayed due to the Governor's veto of House Bill 1300 of 2020; the law took effect in March 2021 after the General Assembly overrode the veto. Additional legislation was enacted during the 2021 session to address the timing of the enactment and the impact of the COVID-19 pandemic on students. The initial members of the Accountability and Implementation Board (AIB), the new board created to oversee implementation of the Blueprint, were appointed by the Governor in October 2021. AIB is expected to hold its first meeting in November 2021.

Blueprint for Maryland's Future Revisions

House Bill 1300 of 2020 implements the Blueprint for Maryland's Future (Blueprint), which was first established by Chapter 771 of 2019. The bill incorporates policy and funding recommendations of the Commission on Innovation and Excellence in Education, substantially altering State aid and State policy for public schools. House Bill 1300 passed the General Assembly in March 2020 during the legislative session that was shortened due to the COVID-19 pandemic. On May 7, 2020, the Governor vetoed the bill, citing concerns regarding the economic challenges resulting from the pandemic. The General Assembly voted to override the Governor's veto on February 12, 2021, and the law took effect 30 days later as Chapter 36 of 2021.

To account for the timing of the enactment of the Blueprint due to the Governor's veto, the General Assembly passed Chapter 55 of 2021, an emergency bill that generally makes revisions to the Blueprint to adjust funding and programmatic dates. Chapter 55 delays or extends inception of certain programs and requirements, the due dates for various reports, and the timeframe for certain provisions under the Blueprint – generally by one year. In addition, the legislation includes several provisions to address the impact of COVID-19 on students.

Blueprint Funding and Policy Revisions

Education Funding

Chapter 55 makes technical and clarifying changes to several funding formulas to conform with the intent of the Blueprint. The year for which tax increment financing data is incorporated in local property assessable base is moved back one year to the second prior fiscal year.

To account for the effects of COVID-19 on school enrollment, the full-time equivalent enrollment count for the 2020-2021 school year is excluded in each instance that this count would otherwise be used for determining the "enrollment count." The foundation per pupil amount is increased beginning in fiscal 2025, to cover specified educational technology costs. In using these additional funds, local boards of education must prioritize the purchase of digital devices. New maintenance of effort (MOE) requirements that local governments fund the local share of all wealth-equalized formulas were delayed until fiscal 2023, and the calculation of MOE for fiscal 2023 was specified. The bill also adjusted funding for the Concentration of Poverty grant program.

Beginning in fiscal 2023, funding mandated by Chapters 36 and 55 will be required to be included in the annual budget bill, unless general fund revenues decrease by more than 7.5% in any fiscal year as specified in Chapter 55. As a result of the use of COVID-19 federal funds, the veto override and passage of several revenue bills that dedicated additional funding to the Blueprint Fund, the Department of Legislative Services estimates there will be sufficient funding available in the Blueprint Fund to cover the funding requirements of Chapters 36 and 55 through at least fiscal 2026.

Select Policy Revisions

Teachers: Under Chapter 55, teacher salary increases associated with the career ladder begin one year later, July 1, 2022 (fiscal 2023). Local boards have until July 1, 2024, to develop and implement educator career ladders, and the Maryland State Department of Education (MSDE) has until 2024 to develop and implement professional development training on educator career ladders. All existing teachers must receive the training by June 30, 2026. Alternative teacher preparation programs have an additional year, until 2022, to meet the minimum program requirements, and the bill specifies that programs in existence prior to July 2021 (instead of July 2020) are subject to the requirement.

Early Childhood: The dates by which specified percentages of prekindergarten slots must be provided by community providers in the publicly funded full-day prekindergarten program are extended by one year. Chapter 55 also extends the date by which community providers must meet specified program quality standards to 2025-2026 school year. The funding mandate for the EXCELS bonus program is altered to begin in fiscal 2023 with 10% annual increases in fiscal 2024 through 2028.

Career and Technical Education (CTE): The deadlines for various plans to be completed by the CTE Committee and submitted to the CTE Committee are generally extended by one year. The year by which 45% of high school students must earn a CTE credential or complete an apprenticeship is extended to 2031. The CTE Committee must report to the Accountability and Implementation Board (AIB) on deployment of CTE expert review teams for an additional year.

COVID-19-related Programs

Chapter 55 requires each local board of education, to the extent allowed by federal law, to use federal funding received to address the effects of COVID-19 on education to mitigate learning loss due to the pandemic and to support the goals of the Blueprint.

Summer Learning: To address the effects of the COVID-19 pandemic, local boards of education must, in calendar 2021 and 2022, implement a summer school program for public school students, including certain children eligible for prekindergarten and kindergarten enrollment. During summer 2021, local school systems reported over 123 distinct summer programs with 138,555 available seats. Of all summer programs, 66% were in person with the remainder being virtual. Most systems had programs for students at all grade levels. All programs included academic supports in math and language arts. Local school systems report that the goals for the various summer programs included academic acceleration and remediation, credit recovery, academic enrichment, and support for student mental health and well-being.

Tutoring and Supplemental Instruction: In each of the 2021-2022 and 2022-2023 school years, each county board must provide certain tutoring and supplemental instruction meeting certain criteria for grades 4 through 12 public school students to address learning loss from the effects of the pandemic. State and federal funds provided for COVID-19 relief must be used by local school systems and schools to expand existing tutoring programs. County boards must report on the summer school program and tutoring and supplemental instruction.

Social Emotional Learning: Each county board must also use specified funds to address trauma and behavioral health issues exacerbated by the effects of COVID-19 pandemic on students and their families and to identify and provide necessary supports and services for students. County boards must submit plans for the use of these funds before fiscal 2022 funds may be released.

Learning Loss: As part of continued COVID-19 recovery efforts, MSDE conducted an early fall student assessment – the Maryland Comprehensive Assessment Program – as one of several strategies to identify how students are performing academically. The results, in combination with other assessments and class work, will help educators better understand student needs, address disrupted education, and accelerate learning opportunities for all students. Statewide results are expected to be available in January 2022. Beginning in the 2022-2023 school year, MSDE must send expert review teams to schools or groups of schools that continue to have persistent learning loss related to the COVID-19 pandemic to determine the reason that the learning loss persists.

Accountability and Implementation Board

AIB is the body charged with overseeing implementation of the Blueprint. Chapter 55 gives AIB plenary authority over entities for which it has oversight responsibility and clarifies that the Comprehensive Implementation Plan that AIB must develop and adopt must include intended outcomes to be achieved by the Blueprint. AIB is extended by one year to June 30, 2032. The terms of initial AIB members are also extended by one year. The deadlines for various plans to be completed by AIB and submitted to AIB are extended by one year. AIB must complete the Blueprint Comprehensive Implementation Plan by February 15, 2022, with local boards required to submit their plans to AIB by June 15, 2022. AIB's required annual report to the Governor and General Assembly is delayed by one year to begin November 1, 2021. AIB may not withhold funds from local boards in fiscal 2022; corresponding changes are made to subsequent dates.

The Governor, the President of the Senate, and the Speaker of the House appointed the six members of the AIB Nominating Committee in June 2021. On September 1, 2021, after consideration of 43 applicants, the nominating committee unanimously selected a slate of nine nominees for consideration for appointment to the seven-member AIB. On October 1, the Governor announced the names of the seven initial appointments: Dr. Mara R. Doss; Mr. Fagan Harris; Dr. William E. "Brit" Kirwan; Mr. Isiah "Ike" Leggett; Dr. Jennifer M. Lynch; Mr. Joseph Manko; and Dr. Laura M. Stapleton. The Governor, President, and Speaker jointly selected Mr. Leggett to chair AIB on October 25, 2021. AIB is scheduled to hold its first meeting in November 2021.

For further information contact: Stacy.Goodman@mlis.state.md.us

Education

School Reopening and Addressing Impacts of COVID-19

Every public school in the State opened the 2021-2022 school year with in-person instruction for the first time since schools were closed in March 2020 due to the COVID-19 pandemic. The State and local school systems are using many strategies to reduce disruptions to in-person schooling, including mandatory masking, contact tracing and quarantining, and increased sanitation. Federal COVID-19 relief funds are supporting efforts to address the additional costs of school reopening and the impacts of the pandemic on student learning loss and mental health.

Schools Reopen

The 2021-2022 school year began with all of Maryland's 24 school systems opening with full-time, in-person instruction available for all students. Due to the COVID-19 pandemic, the prior school year began with most students receiving remote instruction, with most school systems phasing in hybrid and fully in-person instruction throughout the 2020-2021 school year.

To reduce interruptions to in-person learning for this school year, the State and local school systems have implemented layered prevention strategies. Universal indoor masking and COVID-19 vaccination and testing protocols are discussed in further detail below. Local school systems have also employed other strategies such as increasing sanitation, physical distancing, and ventilation, as well as conducting contact tracing and quarantining and isolating students and staff that have been exposed to COVID-19.

Masking and Quarantining Requirements

According to guidance from the Centers for Disease Control and Prevention (CDC), an asymptomatic student who was at least three feet away from a positive case inside a school is exempt from their quarantine recommendations if both students were correctly masked. On August 26, 2021, the State Board of Education proposed an emergency regulation to require all individuals, except under certain circumstances, to wear masks covering the nose and mouth inside all public schools. At the time of the meeting, 5 of the 24 local school systems in the State had adopted a permissive masking policy in contrast to other local school systems requiring universal masking of students and staff. The State board indicated that the emergency status was required to mitigate the spread of COVID-19 in Maryland public schools, prevent public school closures, and limit the number of students required to quarantine out of the classroom during the 2021-2022 school year due to COVID-19. The emergency regulation was approved by the Joint Committee on Administrative, Executive, and Legislative Review on September 14, 2021, and expires February 25, 2021. The State board held a special meeting on November 16, 2021, to hear from public health experts and the public about the masking requirement and will review the mask mandate at its December meeting by looking at the data from the first three months of the school year.

In Maryland, there has been no standardized rule on when students should be quarantined and for how long, but the Maryland Department of Health (MDH) and the Maryland State Department of Education (MSDE) recommended at the beginning of the 2021-2022 school year that unvaccinated close contacts quarantine regardless of their test results for 14 days after exposure. Fully vaccinated close contacts are not required to quarantine if they have no symptoms, unless they test positive.

On October 29, 2021, MSDE and MDH updated their quarantine guidance to include shortened quarantine options intended to balance the negative impact of prolonged and repeated quarantine on students and staff. Under a CDC shortened quarantine protocol for K-12 schools, quarantine can end after day 10 if no symptoms have been reported during daily monitoring, or quarantine can end after day 7 with a negative test collected after day 5. These shortened quarantine periods require individuals to monitor for symptoms daily through day 14, correctly and consistently use a face mask, and practice physical distancing.

In addition to the CDC shortened quarantine protocol, MDH and MSDE provided MDH modified quarantine options for K-12 schools that could be adopted for asymptomatic unvaccinated students. The guidance states that if a local school system or school chooses to implement any of the modified quarantine options, MDH and MSDE strongly recommend specified protocols, including the wearing of masks by all individuals. The three options for close contacts in increasing order of risk are (1) test to stay; (2) weekly screening tests; and (3) correct and consistent use of well-fitted masks. Local school systems can choose if and how to implement a CDC shortened quarantine or MDH modified quarantine protocol. However, the potential elimination of the universal masking requirement may decrease the effectiveness of these protocols in stopping the spread of COVID-19 in schools.

Vaccinations and Testing Protocols

As of November 2, 2021, following the CDC's recommendation, everyone age 5 and older is eligible for a COVID-19 vaccination. Vaccines are fully approved for individuals aged 16 and older, and emergency use authorization has been granted for individuals age 5 through 15. As of October 15, 2021, four local school systems (Anne Arundel, Baltimore, Howard, and Prince George's counties) require or will require a staff member to be vaccinated or to submit a COVID-19 test periodically. In addition, Baltimore City Public Schools and Montgomery County Public Schools have announced that all staff must be vaccinated without a testing option.

Baltimore City and Montgomery County high school students must be fully vaccinated or have an approved medical exemption to participate in winter and spring school extracurricular athletics programs. In addition, eight systems (Anne Arundel, Baltimore, Charles, Frederick, Howard, Prince George's, Somerset, and Talbot counties) will require students to be fully vaccinated against COVID-19 or participate in a regular COVID-19 testing regimen. In

Charles County, a vaccine or regular testing is required for participation in all middle or high school extracurricular activities.

Several school systems have established or are in the process of establishing additional testing protocols. Baltimore City has established weekly testing of all unvaccinated students and staff. The program has been called expensive but effective and has turned up dozens of asymptomatic cases. Anne Arundel County has announced plans to establish a similar program.

Federal COVID-19 Relief Funds

Since March 2020, Maryland local education agencies (LEA) received over $3.1 billion in federal funds for learning loss, safe reopening of schools, supplemental instruction and tutoring, summer school, and behavioral health support. Of these funds, $2.7 billion (88%) was allocated in fiscal 2020, 2021, and 2022 directly to LEAs according to federal COVID-19 funding guidelines, and $356.1 million (12%) was allocated in fiscal 2021 and 2022 in the fiscal 2022 Supplemental Budget No. 5. These funds to LEAs were distributed by program as follows:

- $1.7 billion (57% of total) in fiscal 2022 for learning loss from the American Rescue Plan Act (ARPA) and Elementary and Secondary Emergency Relief (ESSER III) fund;

- $975.0 billion (36% of total) in fiscal 2020 and 2021 for safe reopening from the Coronavirus, Aid, Relief, and Economic Security Act, ESSER I fund, Coronavirus Response and Relief Supplemental Appropriation, ESSER II fund, and the ARPA;

- $271.1 million (9% of total) in fiscal 2021 for supplemental instruction and tutoring from the Coronavirus Relief Fund and the ARPA;

- $50.0 million (2% of total) in fiscal 2021 and 2022 for summer school from the ARPA; and

- $25.0 million (1% of total) in fiscal 2021 and 2022 for behavioral health from the ARPA.

Exhibit 1 shows the distribution of these funds by LEA and program.

Exhibit 1
COVID-19 Federal Funds for Local Education Agencies
Fiscal 2020-2022
($ in Millions)

LEA	Learning Loss	Safe Reopening	Supplemental Instruction and Tutoring	Summer School	Behavioral Health	Total
Allegany	$25.3	$14.0	$3.9	$0.8	$0.3	**$44.3**
Anne Arundel	108.7	61.0	16.5	2.7	1.8	**190.7**
Baltimore City	443.5	247.0	56.3	10.5	2.8	**760.1**
Baltimore	217.0	121.7	33.1	5.7	3.3	**380.8**
Calvert	11.5	6.5	2.6	0.4	0.5	**21.5**
Caroline	13.7	7.7	2.7	0.6	0.2	**24.9**
Carroll	16.8	9.8	4.0	0.6	0.7	**31.9**
Cecil	27.8	15.7	4.8	0.9	0.5	**49.7**
Charles	30.9	17.2	7.0	1.4	0.9	**57.4**
Dorchester	17.5	9.7	2.6	0.5	0.2	**30.5**
Frederick	37.9	21.4	8.4	1.4	1.4	**70.5**
Garrett	9.0	5.0	1.1	0.2	0.1	**15.4**
Harford	42.5	23.8	8.0	1.3	1.2	**76.8**
Howard	43.5	24.2	8.5	1.3	1.5	**79**
Kent	5.2	2.9	0.6	0.1	0.0	**8.8**
Montgomery	252.1	138.1	32.2	5.4	2.8	**430.6**
Prince George's	274.5	154.1	51.9	11.1	4.5	**496.1**
Queen Anne's	6.8	3.8	1.2	0.2	0.2	**12.2**
St. Mary's	26.1	14.4	4.3	0.7	0.6	**46.1**
Somerset	13.5	7.4	1.8	0.4	0.1	**23.2**
Talbot	8.2	4.6	1.1	0.2	0.0	**14.1**
Washington	55.3	30.6	8.9	1.8	0.8	**97.4**
Wicomico	47.4	26.5	8.1	1.7	0.6	**84.3**
Worcester	14.4	8.0	1.6	0.3	0.1	**24.4**
Total	**$1,749.0**	**$975.0**	**$271.1**	**$50.0**	**$25.0**	**$3,070.1**
% of total	57%	32%	9%	2%	1%	

LEA: local education agency

Source: Maryland State Department of Education; Department of Legislative Services

State education agencies (SEA) also received federal funds in fiscal 2020, 2021, and 2022 for COVID-19 related expenses. ARPA (ESSER III) funds required set-asides for specific state interventions, including 5% of total funds aimed specifically at learning loss and 1% for summer enrichment and comprehensive afterschool programs respectively. From the $241.9 million in SEA funds from ESSER II and III, MSDE has currently allocated a total of $191.2 million to learning loss, safe reopening, and behavioral health support. At this time, $50.7 million of available funds remains unallocated to specific programs. **Exhibit 2** shows MSDE allocations for ESSER II and III funds for these programs.

Exhibit 2
MSDE Administrated COVID-19 Federal Funds
Fiscal 2022
($ in Millions)

Program	ESSER II	ESSER III	Total
Learning Loss	$0.0	$97.6	$97.6
Mental Health Teams	30.0	10.0	40.0
Summer School Programs	0.0	19.5	19.5
Afterschool Programs	0.0	19.5	19.5
Adverse Childhood Experiences	6.8	3.2	10.0
Acceleration Academies for At-risk Students	2.5	0.0	2.5
Low Income Advanced Placement Exams	2.1	0.0	2.1
Subtotal	***41.4***	***149.8***	***191.2***
Unallocated Funds	17.6	33.1	50.7
Total	**$59.0**	**$182.9**	**$241.9**

ESSER: Elementary and Secondary Emergency Relief Fund
MSDE: Maryland State Department of Education

Source: Maryland State Department of Education; Department of Legislative Services

Federal funds for COVID-19 related expenses, safe reopening, and learning loss were also distributed to Maryland School for the Blind, Maryland School for the Deaf, and nonpublic schools in fiscal 2020 and 2021.

Identifying and Addressing Learning Loss and Mental Health Needs

To date, the State has used student attendance and grades to measure the effect that the COVID-19 pandemic has had on students. In 2020 and 2021, due to the difficult nature of the ongoing pandemic, the U.S. Department of Education (USDE) granted waivers to states for standardized assessments that would otherwise be required under the Every Student Succeeds Act. The State submitted and USDE approved waivers for spring 2020 and spring 2021; therefore, no single standardized assessment of all students in the State occurred. This year, early fall 2021 assessments will provide the ability for statewide comparisons. MSDE will also issue reports to teachers and administrators to help them focus on particular areas in which students are struggling. Individual reports generated from the assessment will also be sent home with students.

In recognition of the learning loss and trauma caused by the pandemic, the 2021 legislation made revisions to the Blueprint for Maryland's Future (Chapter 55), including a requirement that LEAs use federal COVID-19 funds to address the educational effects and behavioral health needs caused by the COVID-19 pandemic. Specifically, LEAs are required to provide summer school programs in calendar 2021 and 2022, and in fiscal 2022 and 2023 each LEA must provide supplemental instruction and tutoring for students to address learning loss and identify and provide necessary supports for students and their families to address trauma and behavioral health issues exacerbated by COVID-19. Each LEA must submit reports on how funds were spent for summer school, tutoring, and behavioral health in calendar 2022 and 2023. For additional information on the Blueprint for Maryland's Future and implementation of summer school, see "Blueprint for Maryland's Future" within the Education section of this *Issue Papers of the 2022 Session.*

To address behavioral health, Chapter 55 also required LEAs to report by September 1, 2021, on how they planned to provide behavioral health services to students, ensure that services addressed issues exacerbated by COVID-19, monitor students experiencing more behavioral health issues and trauma than other students, and develop key metrics to evaluate the effectiveness of the services provided. LEAs are encouraged to coordinate services with school-based health centers in providing behavioral health and trauma supports to students. LEAs must submit their plans before fiscal 2022 funds may be released. Of the 12 plans submitted as of November 12, 2021, many LEAs plan to modify existing behavioral health and social emotional learning programs to provide services to students and to use measurements associated with those programs, along with other available measurements such as grades and disciplinary referrals, to measure the effectiveness of treating these students.

Finally, MSDE is implementing a statewide mental health program that includes six regional crisis response centers with clinical support teams focused on the mental and social-emotional needs of students. Clinical support teams will consist of clinical psychologists, licensed professional counselors, certified social workers, school nurses, and family navigators. Teams will assess student and family needs and help parents work through challenges related to student needs, help create family specific action plans, and refer families to local community resources who can help with family and student needs.

For further information contact: Alistair.Johnston@mlis.state.md.us

Education

School Construction

The first school construction projects have been approved for funding under the Built to Learn Act, with the first round of bond proceeds available in November 2021. After a two-year delay, the statewide assessment of public school facilities was completed in July 2021. The Workgroup on the Assessment and Funding of School Facilities is reviewing the results of the assessment to determine whether and how the results may be used to support the prioritization of State funding for school construction projects. The workgroup is also considering changes to the State/local cost-share formula, gross area baseline allowances for school construction, and other related issues, with a final report due in December 2021.

Built to Learn Act Updated to Reflect Delayed Effective Date

The Built to Learn Act was enacted as Chapter 20 of 2020, but its implementation was delayed because it was contingent on the enactment of the Blueprint for Maryland's Future – Implementation (Chapter 36 of 2021) which was vetoed by the Governor in 2020. Following the General Assembly's vote to override the veto in February 2021, the Built to Learn Act immediately took effect, although funding mandates in the Act for fiscal 2022 no longer applied due to the delayed implementation. The Built to Learn Act authorizes the Maryland Stadium Authority (MSA) to issue up to $2.2 billion in revenue bonds, backed by annual payments from the Education Trust Fund, for public school construction projects in the State, including to support a possible public-private partnership in Prince George's County. Chapter 698 of 2021 revised provisions of the Built to Learn Act due to the delay in the Act's implementation.

Prior to the issuance of any Built to Learn bonds, MSA and the Interagency Commission on School Construction (IAC) are required to enter into a program memorandum of understanding (MOU) that sets forth, among other things, the selection criteria under which schools will receive priority for funding under the program. The program MOU was approved on July 8, 2021. Additionally, Chapter 20 requires MOUs between MSA, local boards of education, and local governments for proposed projects before any Built to Learn funds may be allocated to a project. Any allocation for an approved project must be used within 10 years or be subject to reallocation. As of October 2021, no project MOUs have been executed, but MSA advises that several are in process.

Based on current market conditions, MSA anticipates issuing a total of $2.0 billion in bonds to finance the program although changing market conditions may affect the eventual total amount. **Exhibit 1** shows the mandated distribution of Built to Learn funds based on the $2.0 billion estimate in total proceeds.

Exhibit 1
Allocation of Bond Sale Proceeds Under Built to Learn Act
($ in Millions)

	Percent of Total	Proceeds
Anne Arundel	12.5%	$250.0
Baltimore City	21.0%	420.0
Baltimore	21.0%	420.0
Frederick	5.1%	102.0
Howard	6.6%	132.0
Montgomery	21.0%	420.0
Prince George's	*	*
All Other Counties	11.5%	230.0
Unallocated/MSA	1.3%	26.0
Total	**100.0%**	**$2,000.0**

MSA: Maryland Stadium Authority

*Under the bill, Prince George's County receives $25.0 million annually for up to 30 years to supplement local funds for an availability payment if it enters into a public-private partnership agreement, subject to other provisions in the bill.

Source: Department of Legislative Services

As of October 2021, IAC has approved 14 projects that are eligible for an estimated $391.8 million in State support from Built to Learn bond funds. The approved projects are in Anne Arundel (3), Baltimore (4), Carroll (1), Charles (3), Frederick (1), Howard (1), and Montgomery (1) counties. MSA issued the first series of bonds totaling $293 million (including bond premiums) in November 2021 to begin funding those projects' cash flow needs. IAC expects to approve more projects in November, and MSA anticipates additional bond sales early in calendar 2022 to support approved projects.

Statewide School Facilities Assessment

Chapter 14 of 2018, the 21st Century School Facilities Act, made comprehensive changes to the approval process for school construction projects in the State and, among other things, required the completion of a statewide school facilities assessment (SFA) every four years. Chapter 14 required IAC to (1) contract with a third-party vendor to complete SFA by July 1, 2019; (2) coordinate with local school systems to identify data elements for the assessment; and (3) develop standards and procedures to comprehensively update the State's data on the condition of school facilities so that this data is not more than four years old. The first step in the assessment was to use an industry standard methodology called the facility condition index (FCI).

This tool is used to quantify the attributes of a school facility and estimate the cost to achieve and maintain the physical condition of a building, in order to provide a standardized comparison rating of building condition. Chapter 14 also required IAC to adopt educational facilities sufficiency standards to be used in the assessment to determine the educational suitability of public school buildings. Together, FCI and sufficiency data collected by the assessment would then be considered by the Workgroup on the Assessment and Funding of School Facilities, which was also established by Chapter 14, to determine how the relative condition of school facilities should be prioritized, known as the Maryland Condition Index (MDCI), and whether MDCI should be used in funding decisions.

Delays in the procurement process led to the first SFA not being completed until July 2021. The Workgroup on the Assessment and Funding of School Facilities, which met in 2019 but was unable to complete its work due to the delay in SFA, resumed meeting in July 2021 to review the results of the SFA. The workgroup is also considering and making recommendations in the following areas which were added to its charge by Chapter 698 of 2021:

- factors used to develop the State and local cost-share formula for school construction projects, including incorporating related changes to the formulas used to calculate State education aid under the Blueprint for Maryland's Future;

- methods used to establish gross area baselines and the maximum State construction allocation for public school construction projects;

- the purpose and implementation of the Local Share of School Construction Costs Revolving Loan Fund, which was established by Chapter 14 but never funded; and

- the long-term effects of school construction decisions on the cost per student and total cost of ownership of public school facilities and appropriate funding or other incentives for local jurisdictions to reduce costs.

Chapter 698 also extended the deadline for the workgroup's final report to December 31, 2021. Since being reconstituted, the workgroup has met four times and is on track to meet its reporting deadline. Legislation will likely be proposed during the 2022 session to implement the workgroup's recommendations.

Education

Child Care and Early Childhood Education

Maryland's child care and early childhood education providers were already struggling with workforce shortages and unsustainable operating costs prior to the COVID-19 pandemic. The public health emergency created new challenges as providers were forced to temporarily close and have since experienced high staff vacancies, turnover, and increased operating costs upon reopening. These factors have led to increased costs for families and limited capacity, which is especially concerning as the State implements a required early childhood education expansion under the Blueprint for Maryland's Future. Through the federal American Rescue Plan Act, Maryland has received $502 million to address these challenges and support the child care industry.

Impact of COVID-19 on the State's Child Care Industry

Workforce Shortages

The COVID-19 pandemic has had a significant impact on child care providers both nationwide and in Maryland. According to data from the U.S. Bureau of Labor Statistics, the number of employees in the child care day services industry decreased by nearly 400,000 in the aftermath of the pandemic. The industry employed approximately 1.1 million workers in February 2020; that amount decreased to 673,000 by April 2020. Since that time, employment in the industry has increased, although not to prepandemic levels. As of September 2021, employment in the child care industry totaled about 940,000 – still far below the prepandemic maximum employment level. Due to the public health emergency, many child care providers were required to temporarily close, reduce staff, and serve fewer children once reopened. Staffing challenges have persisted, leading to child care shortages across the country and leaving many parents unable to return to the labor market.

Increased Operating Costs and Costs to Families

The average child care worker is in the second percentile of all workers in terms of salary, earning about $24,000 annually. Child care providers struggle to offer higher wages due to low profit margins, even prior to the COVID-19 pandemic. Personnel costs, which account for about 50% to 60% of total child care program operating costs, impact the small, single-establishment child care providers that make up much of the industry and make it difficult to raise wages. Additionally, low wages also contribute to workforce shortages, as programs cannot recruit and retain staff. The National Association for the Education of Young Children reports that job opportunities in nonchild care industries (which have more flexibility to raise wages in the wake of the pandemic) make low-wage child care work less appealing to potential employees and increase the turnover rate among child care workers. The public health emergency further increased costs due to health and safety requirements.

Prior to the COVID-19 pandemic, child care was already one of the biggest costs for families in the United States. According to a U.S. Treasury analysis of Census data, an average family in the U.S. spends approximately 13% of its income on child care, which limits the ability of child care providers to raise the cost of services without making child care unaffordable for many families. In Maryland, child care costs are higher than the national average. According to *The ABC's of Early Childhood 2021* report published by the Maryland Family Network, the estimated percentage of 2020 median family incomes spent on child care ranged from a low of 17.3% in Talbot County to a high of 32.9% in Baltimore City. The limited ability of families to pay for child care reduces child care programs' flexibility to raise wages and attract staff. Without appropriate staffing, Maryland's child care system will struggle to return to full capacity or expand existing capacity. This could make the early childhood education expansion called for in the Blueprint for Maryland's Future more difficult to implement.

Factors Limiting Early Childhood Provider Capacity in Maryland

Despite the challenges described above, many child care providers have reopened and increased staff since the State's stay-at-home order was lifted, although – mirroring the nationwide trend – not to pre-COVID-19 levels. According to the Maryland State Department of Education (MSDE), as of July 30, 2021, 95% of providers had reopened in Maryland since the onset of the pandemic. However, this measure does not reflect reduced capacity within each program, as providers may be serving fewer children than the number of slots they are licensed to fill. In a response to the 2021 *Joint Chairmen's Report*, MSDE stated that providers were not required to report the number of available child care slots, but the department was in the process of updating its data system to be able to collect this data in the future.

Prior to the COVID-19 pandemic, child care capacity in Maryland was already in decline. From fiscal 2015 to 2020, MSDE reported a reduction of 3,485 slots, or 1.6%. MSDE attributed this trend to declining numbers of family child care providers operating in the State. The COVID-19 pandemic and resulting stay-at-home order in spring 2020 further increased operating costs that led providers to close and has caused new issues, such as restricted capacity and enhanced health and safety protocols. Since the partial reopening of facilities in summer 2020, child care capacity in the State has continued to decrease. According to MSDE data, between July 2020 and September 2021, the total number of licensed providers decreased by 503. Most of this decrease is attributable to fewer registered family child care programs.

Although the pandemic has greatly impacted the availability of child care services in the nation and in Maryland, this may be mitigated as vaccines become widely available for children ages 5 to 11. More school-age children receiving vaccinations may alleviate before and after school care providers' health and safety concerns related to the pandemic. Trial data on usage of vaccines in children younger than age 5 is expected to be available by the end of calendar 2021.

Expansion of Prekindergarten and Other Early Childhood Education Programs under the Blueprint for Maryland's Future

Many of the challenges facing child care providers also impact other providers of early childhood education services, including prekindergarten programs, that serve an important role in expanding access to high-quality, full-day early childhood education, as recommended by the Commission on Innovation and Excellence in Education. The commission's recommendations were enacted through Chapter 36 of 2021, the Blueprint for Maryland's Future (Blueprint), which created a new funding formula to expand voluntary full-day prekindergarten to low income four-year-olds and three-year-olds in the State, with top priority given to the families and students living in the greatest poverty. Chapter 36 also codifies existing capacity building and tuition assistance programs, such as the Child Care Accreditation Support Fund, that support the early childhood workforce generally. Increased funding for these types of programs could help address recruitment and retention issues affecting the early childhood workforce that were exacerbated by the pandemic, as discussed earlier.

The impact of COVID-19 on private prekindergarten providers' capacity is especially concerning as the Blueprint's efforts to expand early childhood education rely on both public and private providers. The Blueprint, as amended by Chapter 55 of 2021 (Blueprint for Maryland's Future – Revisions), requires that community-based providers initially account for 30% of full-day prekindergarten slots in each local education agency funded by the new formula, with that amount rising incrementally to 50% by the 2026-2027 school year. MSDE may issue a waiver if a school system demonstrates that an insufficient number of eligible private providers exist to meet the requirement. At this time, the number of available high-quality prekindergarten slots in public and private programs is unknown, especially as the pandemic contributes to lower capacity across the early childhood education system. This may necessitate widespread use of waivers and may cause challenges in implementing the expansion plan overall. Furthermore, providers may face difficulty meeting required quality standards to access public funding under the new formula as staffing shortages and increased operating costs persist.

Use of COVID-19 Federal Funds for Child Care

The federal government has provided financial assistance to mitigate the effects of the COVID-19 pandemic on child care systems across the nation. Specifically, on April 15, 2021, the President Joseph R. Biden, Jr. Administration announced the release of $38.9 billion authorized in the American Rescue Plan Act (ARPA) of 2021 for states to address the child care crisis caused by the public health emergency. This supplements the existing Child Care and Development Block Grant (CCDBG) and is divided into the following two funds:

- $24.0 billion, of which Maryland's allocation is $309.1 million, to be used for child care stabilization to assist providers in reopening, staying open (including keeping staff on payroll), maintaining safe and healthy learning environments, and providing mental health supports to children and employees; and

- $15.0 billion, of which Maryland's allocation is $192.9 million, to be used more flexibly on programs that will make child care more affordable and accessible and increase compensation for early childhood workers, among other possible uses.

Child Care Stabilization Grants

A fiscal 2022 budget amendment signed by the Governor on September 16, 2021, appropriated the total $309.1 million in federal child care stabilization funding with $278.2 million supporting grants to eligible child care providers and $30.9 million supporting administrative and other uses. Using most of the administrative allocation, MSDE plans to spend $15.0 million to provide start up grants and technical assistance to providers, $11.7 million to establish a portal to distribute and monitor ARPA funding, and $3.3 million for personnel to manage the grant program.

MSDE posted an application for child care stabilization grants that was open from July 14 to August 6, 2021, and originally expected to distribute all payments by September 30, 2021. However, the department experienced delays due to a lag in hiring contractual staff to process grant applications. Payments are now expected to be distributed on a rolling basis in October 2021 to just under 5,200 providers. Awards were set at a base of $15,000 with an additional $500 per licensed slot. A total of $155 million is being distributed in the first round of stabilization grants; MSDE anticipates awarding the remaining $123.2 million to providers in early calendar 2022.

Supplemental CCDBG Discretionary Funds

Supplemental CCDBG funding was allocated on a discretionary basis for states to address growing workforce shortages, reduced child care slots, and increased costs for families exacerbated by the pandemic. Although MSDE has not yet shared a spending plan for its $192.9 million award, the department has engaged stakeholders in the planning process through three virtual town halls. States must obligate this funding by the end of federal fiscal 2023 and are encouraged to prioritize increasing compensation for the child care workforce and increasing provider rates paid through subsidy programs.

Higher Education

Higher Education COVID-19 Update

In light of enrollment declines in fall 2020 as campuses de-densified and courses were taught remotely, questions have arisen as to whether students have returned to campuses this fall at prepandemic levels. For fall 2021, institutions have implemented various health and safety protocols to help keep those on campuses safe. While three rounds of federal funding provided financial relief to institutions to cover COVID-19 expenditures and lost revenue, it was not enough to cover budget shortfalls at every campus.

Back to Campus

After closing campuses, sending students home, and pivoting to remote learning in spring 2020, campuses opened in fall 2020 at a reduced capacity. Residence hall occupancy was reduced, in general to 50%, and the majority of classes were taught remotely. As students returned to campus, there was much uncertainty about what impact the COVID-19 pandemic would have on enrollment. In fall 2020, according to the Maryland Higher Education Commission, statewide undergraduate enrollment declined 2.4% with enrollments declining 4.4% at community colleges, 0.8% at public four-year institutions, and 1.7% at independent institutions.

In fall 2021, campuses fully opened, welcoming students back for in-person classes and with residence halls at almost full capacity (rooms were set aside for students who may need to be isolated or quarantined). Institutions implemented various policies and procedures to help keep students, faculty, and staff safe. As shown in **Exhibit 1**, all public four-year institutions and a majority of Maryland Independent College and University Association (MICUA) institutions require those on campus to be vaccinated. All State and most MICUA institutions require face masks to be worn while indoors. Furthermore, all public four-year institutions and a majority of MICUA institutions have instituted regular testing of nonvaccinated individuals.

Exhibit 1
Summary of COVID–19 Protocols by Higher Education Segment
Fall 2021

	Vaccines	Indoor Masking	Testing
Community Colleges	Requirement at 3 institutions for students, faculty, and staff (effective spring 2022 at 1 institution); 1 institution for faculty and staff; 1 institution for residential students only; and 4 institutions for those with nursing clinicals only	All institutions require indoor masking	5 institutions provide onsite testing, and 1 institution makes home testing available
Public Four-year Institutions	All 11 institutions have requirements for students, faculty, and staff	All institutions require indoor masking	All institutions regularly test unvaccinated (frequency varies by institution)
MICUA	6 institutions have requirements for students, faculty, and staff; 2 institutions for students only; and 1 institution for residential students only	11 institutions require indoor masking, and 1 institution recommends indoor masking for unvaccinated	9 institutions regularly test unvaccinated (frequency varies by institution), and 2 institutions regularly test vaccinated and unvaccinated (varies by institution)

MICUA: Maryland Independent College and University Association

Source: Maryland Higher Education Commission; Department of Legislative Services

Budget Impact and Federal Funding

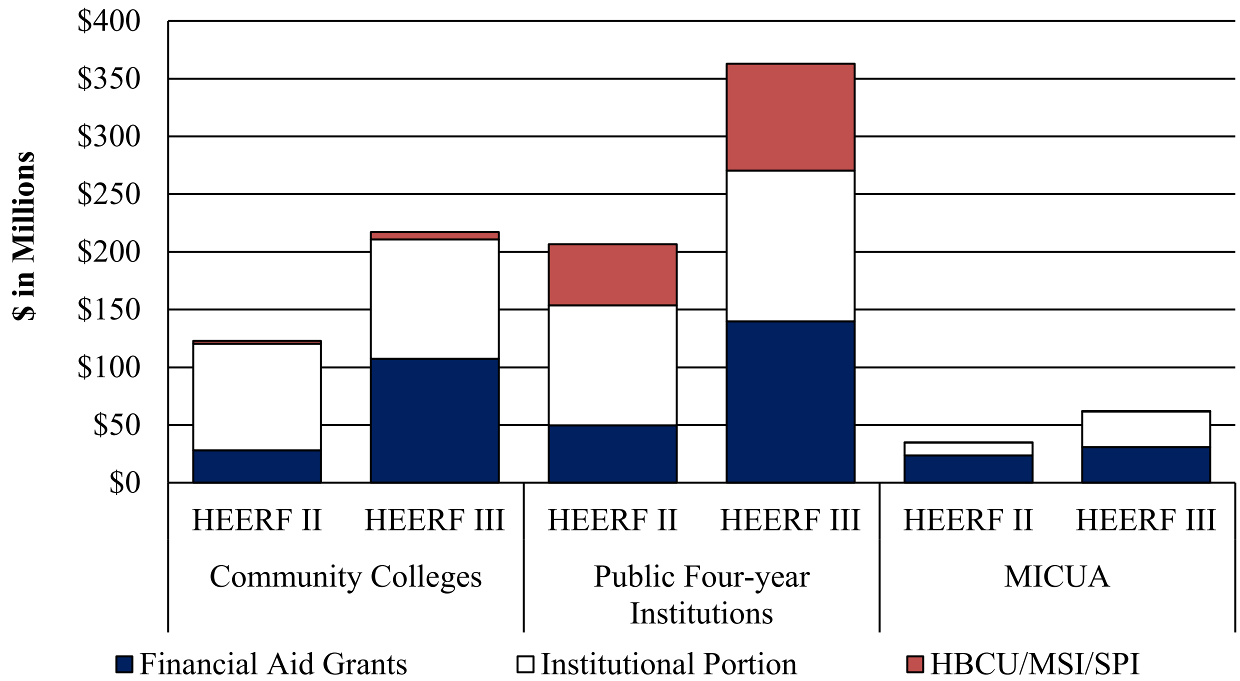
The de-densification of campuses and the reduced occupancy of residence halls for the 2020-2021 academic year (fiscal 2021) led to a significant loss of revenues, particularly for auxiliary revenues that include room and board. In addition, institutions incurred expenses related to implementing new health and safety protocols. The University System of Maryland (USM) also postponed a planned 2% tuition increase and froze tuition, fees, room, and board rates at the fiscal 2020 level. These actions, combined with enrollment declines, resulted in a loss of $29.8 million in tuition and fee revenues and $204.0 million in auxiliary revenues. Additionally, USM institutions incurred COVID-19 related expenditures totaling $66.9 million.

Morgan State University (MSU) moved to a remote-only instruction model for the 2020-2021 academic year with the exception of research and laboratory programs and also froze its tuition and fee rates at the 2020 level. These actions, along with an enrollment decline, resulted in an auxiliary revenue loss of $27.6 million and $12.1 million in lost tuition and fee revenues. St. Mary’s College of Maryland (SMCM) offered a hybrid academic delivery of courses for the 2020-2021 academic year, meaning every course was offered simultaneously as face-to-face and remotely while occupancy restrictions were placed in each type of housing unit. As a result of housing restrictions, a decrease in enrollment, and the freezing of tuition and fee rates, SMCM realized a loss of auxiliary revenue totaling $1.9 million and tuition and fee losses of $1.7 million. Additionally, SMCM incurred COVID-19 related expenditures totaling $1.5 million.

Community colleges, including Baltimore City Community College, had varied teaching modalities for the 2020-2021 academic year; some institutions continued to offer face-to-face instruction while others moved to a completely online format. Community colleges had an over 4% decline in enrollment resulting in a loss of auxiliary revenue totaling $9.7 million and $9.9 million in other revenues, and a decrease in tuition and fee revenue of $33.5 million. These institutions also incurred COVID-19 related expenses totaling $7.9 million.

The federal Higher Education Emergency Relief Fund (HEERF) II and III provided under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 and the American Rescue Plan Act, respectively, helped provide financial relief to institutions in fiscal 2021 and 2022. (HEERF I funding was provided by the Coronavirus Aid, Relief, and Economic Security Act in fiscal 2020.) HEERF II and III provided funds for student financial aid and an institutional portion to cover revenue losses and expenses. As shown in **Exhibit 2**, community colleges received a total of $196.0 million for institutional use, the public four-year institutions received $234.0 million, and MICUA institutions received $41.9 million. In total, community colleges received $339.9 million in HEERF II and III funds, the public four-year institutions received $569.4 million, and MICUA institutions received $97.0 million. Overall, institutions received a total of $1.0 billion in HEERF II and III funds, of which $155.1 million went to historically black colleges and universities and minority serving institutions.

Exhibit 2
HEERF II and III Allocations by Higher Education Segment



HBCU: historically black colleges and universities
HEERF: Higher Education Emergency Relief Fund
MICUA: Maryland Independent College and University Association
MSI: minority serving institutions
SPI: Strengthening Institutions Program

II: Coronavirus Response and Relief Supplemental Appropriations Act of 2021
III: American Rescue Plan Act

Source: Department of Legislative Services

In fiscal 2021, USM used $99.3 million of the institution portion of the federal funds to help partially offset budget shortfalls. Institutions covered the remaining shortfalls by eliminating positions, reducing expenditures, and using fund balance. MSU used approximately $57 million of federal stimulus monies in fiscal 2021 for student grants, technology, student housing, remote instruction, campus safety and personal protective equipment, and financial aid to cover lost revenues. SMCM used $1.5 million in federal funding through the State, $1.1 million in institutional support from federal funding, and $6.6 million from a Paycheck Protection Program loan, which was forgiven in May 2021 and recognized as revenue to offset budget shortfalls. The net of revenue losses versus additional revenues demonstrated a positive $1.5 million outcome for SMCM in fiscal 2021.

While campuses fully opened for the 2021-2022 academic year (fiscal 2022), there are questions and concerns as to whether students will return to campuses at the same level as prior to the pandemic. Preliminary data indicates that students are not returning to most campuses at prepandemic levels, which will continue to put downward pressure on revenues.

USM based its fiscal 2022 budget on a near return to normal operations and a slight (0.3%) decline in enrollment. USM budgeted a 3% ($46.6 million) increase in tuition and fee revenues over fiscal 2021 and a 77% ($274.7 million) increase in auxiliary revenues. However, preliminary data indicate a greater enrollment decline than budgeted, which will result in a downward revision of revenue. Institutions plan to use $130.9 million in HEERF II and III funds to cover costs and lost revenues in fiscal 2022, but other budget actions will be needed to fully close the budget gaps.

MSU similarly based its fiscal 2022 budget on a return to pre-COVID-19 levels but noted that expected needs are outpacing expected revenues resulting in an anticipated budgeted operating deficit. Due to the uncertainty around housing revenues and other costs, the base budget is forecasted at a deficit of $6.6 million for fiscal 2022. When one-time additional costs totaling $3.0 million and recurring costs totaling $13.8 million are added, MSU is expecting a deficit of $23.4 million for fiscal 2022. MSU anticipates offsetting this loss with an increase in tuition and fee revenue due to an anticipated increase in the student population ($11.2 million), holding certain vacant positions open ($2.0 million), and a fund balance adjustment ($10.2 million). While enrollment increases are expected in this budget projection, the mix of the student population at the institution may result in expectations not meeting the estimates. As a consequence, MSU may need to utilize HEERF II or HEERF III funds to cover any lost revenues.

SMCM's fiscal 2022 budget was developed with the expectation that the COVID-19 pandemic's effects would continue into the 2021-2022 academic year. Enrollment remained roughly level with expectations, and auxiliary enterprises have recovered from last year's reduced levels. Operating expenditures are currently 10.7% higher than last year, which is consistent with forecasted expectations. SMCM received a total of $2.7 million in HEERF II and HEERF III funding, which will be utilized as needed to address budget shortfalls.

For further information contact: Sara.Baker@mlis.state.md.us/Ian.Klein@mlis.state.md.us

Higher Education

College Affordability

Maryland has several need-based financial aid programs designed to make college more affordable and ensure students have an opportunity to attend college. However, to provide the most benefit, the programs must operate in a manner that directs the funds to the students that the programs are intended to serve. Several issues have arisen regarding eligibility for the Guaranteed Access (GA) grant, including prequalification through the Next Generation Scholars of Maryland Program and the use of family income cutoffs that prevent students from accessing the GA program. There is also an impending issue with the 2+2 Transfer Scholarship Program arising from changes in federal law that require a statutory change.

Guaranteed Access Grants

The Delegate Howard P. Rawlings Educational Excellence Awards (EEA) Program is the State's largest scholarship program; it is also the State's largest need-based scholarship program. The EEA Program consists of two different types of grants: (1) Guaranteed Access (GA) grants that are awarded to the neediest students to ensure that 100% of educational costs are paid; and (2) Educational Assistance grants that are awarded to low- and moderate-income students to assist in paying educational costs. GA grants, when combined with the federal Pell grant, cover 100% of the need for the State's lowest income students. The maximum amount is capped at the total cost of attendance (tuition, fees, and room and board) at the highest cost four-year University System of Maryland institution excluding the University of Maryland, Baltimore Campus and the University of Maryland Global Campus. The maximum award in fiscal 2021 was $19,400.

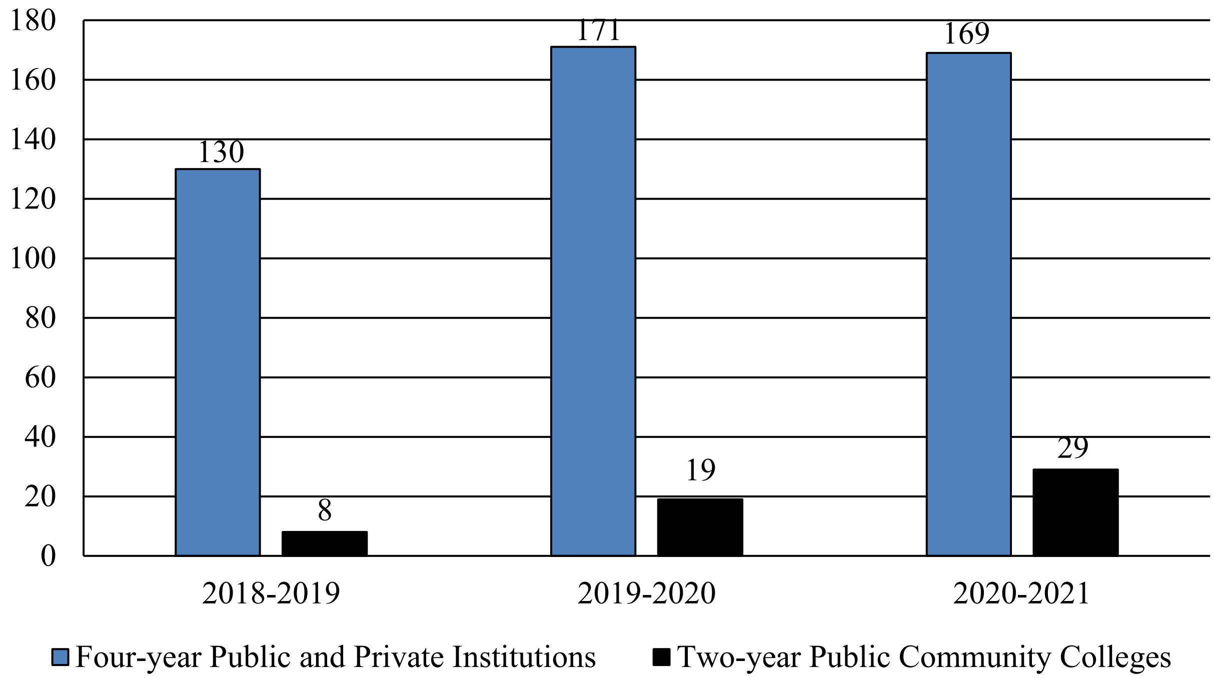
The Maryland Higher Education Commission (MHEC) identifies first-time applicants who are potentially eligible for the GA grant based on the Free Application for Federal Student Aid (FAFSA) or the Maryland State Financial Aid Application (for qualified children of undocumented immigrants who are eligible for in-state tuition) submitted by the March 1 deadline set by MHEC. Previously, students were required to determine themselves whether they might be eligible and submit a separate GA application to MHEC. The number of students receiving GA grants has steadily increased from approximately 1,300 awards in fiscal 2013 to nearly 3,100 awards in fiscal 2021. GA awards accounted for 42% of the EEA appropriation in fiscal 2021 ($88.1 million), which is up from 20% in fiscal 2013. In addition, as described in more detail below, it is intended that eligible students in grades 7 through 10 may prequalify for the GA grant by participating in the Next Generation Scholars of Maryland Program.

Among other requirements, statute requires that eligible GA applicants must have an annual family income below a poverty index determined by MHEC. MHEC has set the income requirement using the federal poverty level, which accounts for family size, at 130% for first-time students and 150% for renewal awards. Students meeting all the requirements are guaranteed funding.

Guaranteed Access Grant Renewal

Although students who meet the requirements for a GA grant are guaranteed funding, if a family's income increases above the designated total, even if by only a dollar, the student may become ineligible to renew the GA award; this is known as the GA cliff. Over the last three award years, as shown in **Exhibit 1**, 526 individuals who had been awarded a GA grant lost eligibility for the award due to their family income exceeding the designated cutoff level. The impact of the GA cliff has been most profound at the four-year institution level; however, the number of those impacted at the two-year community college level has steadily increased. Overall, over the three-year period, 11.4% of GA awards were not renewed due to the GA cliff.

Exhibit 1
Individuals Who Lost a GA Grant to the GA Cliff
Fiscal 2019-2021



GA: Guaranteed Access

Source: Maryland Higher Education Commission; Department of Legislative Services

The Financial Assistance Advisory Council (FAAC) of MHEC meets periodically to review and discuss student financial aid issues and make recommendations to MHEC for policy revision consideration. FAAC has been reviewing the GA cliff issue since 2020 and has developed the following recommended actions to be presented to MHEC, many of which would require statutory changes, with the goal of assisting students impacted by the GA cliff:

1. The continuation of a GA grant as long as the student's estimated family contribution (EFC) would qualify the student for the Federal Pell Grant program (nine-month EFC between $0 and $5,846 in the 2021-2022 school year).

2. If a student's total family income increases above 150% of the federal poverty level, the student does not automatically lose eligibility for the GA grant; instead, the amount would be reduced on a sliding scale based on how far above the 150% poverty index point the family's income has increased.

3. A GA grant renewal student does not lose eligibility due to a temporary increase in family income. The student would need to document that the family income in the most recent year (the year following the year that is being used for income eligibility) has been reduced to a level that would qualify for the grant. If approved, the income overage would be deducted from the approved GA grant amount. This proposal would result in a dollar-for-dollar adjustment for income over the cutoff level and the GA grant award total.

Next Generation Scholars of Maryland Program Implementation

The Next Generation Scholars of Maryland Program is an early commitment financial aid program designed to provide the promise of financial aid to students from low-income families who are less likely to pursue higher education and complete a degree program. Eligible students in grades 7 through 10 who meet income eligibility requirements specified in the law prequalify for a GA grant to be used when they enroll in college. The Maryland State Department of Education (MSDE), in collaboration with MHEC and other stakeholders, is responsible for administering the program. Nonprofit organizations apply to MSDE for grants to provide counseling and support services to students participating in the program. The program has been funded at approximately $5 million annually since fiscal 2018; Chapter 578 of 2021 permanently mandates annual funding at $5 million.

The program served 4,087 students across the eight school systems eligible to participate in the program in fiscal 2021. However, according to MSDE, many of the nonprofit organizations in the program served students who did *not* meet the income requirement to prequalify for a GA grant. Unfortunately, annual data reported by the nonprofit organizations on specific metrics required by statute was not disaggregated between the students who prequalified for the GA grant and those who did not. Therefore, it is not clear to what degree the program is helping low-income students graduate from high school and prepare for college as intended.

Free Application for Federal Student Aid Law Necessitates Statutory Change

In December 2020, the federal FAFSA Act was enacted into law as part of the Consolidated Appropriations Act, 2021. The Act makes many significant changes to the Higher Education Act of 1965 and the FAFSA, including replacing EFC with a new "Student Aid Index" (SAI). For years, EFC has been the figure calculated from the financial information provided on the FAFSA and used as the primary measure to determine the amount of need-based financial aid to offer students. SAI will serve a similar purpose but will be calculated differently.

Although EFC is the primary measure used to determine financial need, the term is only used once in Maryland law, in regard to the 2+2 Transfer Scholarship. Specifically, § 18-2503(10) of the Education Article states that a 2+2 Transfer Scholarship recipient must "[h]ave demonstrated financial need, defined as a federally calculated EFC of $10,000 or less as reported on the student's FAFSA." Most other scholarships with a financial need component require a student to "[d]emonstrate financial need according to criteria established by [MHEC]."

Due to delays in the implementation of some provisions of the federal law by a year, it is unknown if the migration to SAI will be in academic year 2023-2024 or 2024-2025. To provide uninterrupted scholarship distribution, the Department of Legislative Services recommends that the statute for the 2+2 Transfer Scholarship be changed and further recommends using more general statutory language regarding financial need rather than simply changing the reference from EFC to a similar SAI level.

For further information contact: Ian.Klein@mlis.state.md.us/Tiffany.Clark@mlis.state.md.us

Health and Health Insurance

COVID-19 Update

Now in its second year, the COVID-19 pandemic has resulted in 259.5 million cases and 5.2 million deaths worldwide and 47.8 million cases and 771,529 deaths nationally. Three vaccinations are now widely available for individuals 5 and older, including booster shots for those 18 and older. Maryland has the twelfth lowest per capita case rate in the nation and higher vaccination rates compared with the nation overall. However, after declining since September, cases, case rates, the seven-day positivity rate, and hospitalizations are increasing.

Testing, Cases, Hospitalizations, and Deaths

According to the Maryland Department of Health (MDH), 15,419 COVID-19 tests were completed in Maryland on November 28, 2021, with a 4.76% seven-day positivity rate. As of November 29, 2021, Maryland had the twelfth lowest per capita case rate (14 cases per 100,000 population) in the nation. As of November 28, 2021, Maryland reports a total of 584,899 cases, 52,251 individuals ever hospitalized, and 10,957 confirmed deaths since the start of the pandemic. A total of 613 adults and 8 children were hospitalized for COVID-19 in Maryland as of November 28, 2021. After declining since September, cases, seven-day positivity rates, and hospitalizations are increasing.

As in 2020, the jurisdictions with the highest number of cases remain Prince George's County (101,976), Montgomery County (85,170), Baltimore County (80,057), and Baltimore City (64,173). Statewide, approximately one-third of COVID-19 deaths have occurred in congregate living settings (*i.e.*, nursing homes, assisted living, and group homes), with most deaths among residents. Updated data on COVID-19 testing, cases, and deaths in Maryland is available on the MDH dashboard: https://coronavirus.maryland.gov/.

End of Maryland's State of Emergency

Although a federal public health emergency will continue through at least April 2022, on June 15, 2021, Governor Lawrence J. Hogan, Jr. announced the end of Maryland's COVID-19 state of emergency. All statewide emergency mandates and restrictions terminated July 1, 2021. A 45-day administrative grace period ran through August 15, 2021, during which some regulations were relaxed, including winding down emergency health operations. The statewide mask mandated also ended July 1, 2021, with MDH strongly recommending that individuals not fully vaccinated continue to wear face coverings in all indoor settings outside their home and in outdoor settings where physical distancing cannot be maintained. Masks continue to be required in health care facilities, on public transit, and in public schools.

Vaccinations

Three COVID-19 vaccinations are now widely available: Pfizer/BioNTech (available for individuals age 5 and older); Moderna (available for individuals 18 and older); and Johnson and Johnson (available for individuals age 18 and older).

Additional Doses and Boosters

The Centers for Disease Control and Prevention (CDC) recommends that people with compromised immune systems receive an additional (third) dose of the Pfizer/BioNTech or Moderna vaccine. The U.S. Food and Drug Administration has authorized, and CDC endorses, use of a booster dose for all three COVID-19 vaccines. A Pfizer/BioNTech or Moderna booster may be administered at least six months after the primary vaccine series and a Johnson and Johnson booster may be administered at least two months after the primary vaccine. Any individual age 18 or older can get a booster shot and choose which vaccine they receive as a booster dose from among any of the three vaccines. As individuals with comorbidities (including chronic lung diseases, diabetes, heart disease, and obesity) are at increased risk of contracting or dying from COVID-19, MDH strongly recommends that individuals with comorbidities receive either an additional dose or a booster dose of a COVID-19 vaccine as soon as possible.

Vaccine Administration Data

As of November 28, 2021, 69.7% of the U.S. population has received at least one dose of a COVID-19 vaccine, and 59.1% have been fully vaccinated. In Maryland, 88.5% of the total population has received at least one dose, and 66.2% have been fully vaccinated. Of those fully vaccinated in Maryland, 22.5% have received a booster dose. Maryland vaccination rates vary based on age, with 79.7% of those 18 and older and 91.5% of those 65 and older fully vaccinated. A total of 9.3 million vaccination doses have been administered in Maryland, including 4.3 million first doses, 3.8 million second doses, 319,712 single doses, and 967,667 booster doses.

As of November 28, 2021, the jurisdictions with the highest proportion of the population fully vaccinated were Howard (73.8%), Montgomery (71.5%), and Carroll (65.8%) counties. The jurisdictions with the lowest proportion of the population fully vaccinated were Garrett (41.5%), Somerset (45.4%), and Allegany (47.4%) counties. Of those fully vaccinated statewide, 52.7% are White, 25.9% are Black or African American, and 7.2% are Asian, compared with these racial groups' estimated share of the State population in 2020 of 58.0%, 31.3%, and 6.9%, respectively. An additional 9.9% of those fully vaccinated identified as other races, and for 4.2%, the race was unknown. Among fully vaccinated individuals, 9.6% are Hispanic, compared with this ethnicity's estimated share of the State population in 2020 of 10.8%. As of November 19, 2021, 89.4% of the 21,141 residents and 88.2% of the 34,462 staff in Maryland skilled nursing facilities are fully vaccinated.

Vaccine Requirements

The federal government requires all front-line employees of the Department of Veterans Affairs be vaccinated, while all other federal employees and on-site contractors must be vaccinated or submit to testing and other mitigation efforts. Three states (Kentucky, Ohio, and Tennessee) have filed suit to challenge the mandate on federal contractors. On November 5, 2021, the federal Occupational Safety and Health Administration issued an emergency temporary standard that requires large employers (100 or more employees), by January 4, 2022, to develop, implement, and enforce a mandatory COVID-19 vaccination policy or require employees to undergo regular testing and wear a face covering at work. On November 6, 2021, the U.S. Court of Appeals for the Fifth Circuit halted the requirement pending review. Attorneys General in at least 26 states have challenged the requirement in court. In a separate measure, the federal government will also require nursing homes and other health care facilities that receive Medicare or Medicaid funds to ensure all employees are vaccinated by January 4, 2022, with no option for testing.

Several state and local governments have imposed vaccination requirements on specific employees, including Pennsylvania and Virginia. Maryland imposed a vaccine requirement, effective September 1, 2021, for all staff of residential facilities operated by MDH or a local health department, State correctional facilities, State facilities operated by the Department of Juvenile Services, Charlotte Hall Veterans Home, other State congregate living facilities, and all nursing homes and hospitals. In addition, State colleges and universities require all students, faculty, and staff to be vaccinated to be on campus.

Breakthrough Infections

Based on testing performed between January 26, 2021, and November 21, 2021, there have been 36,757 COVID-19 cases among fully vaccinated Maryland residents. Of those cases, there have been 2,607 hospitalizations and 380 deaths. Most of the post-vaccination deaths are linked to underlying conditions and comorbidities. Approximately 16.0% of all confirmed COVID-19 cases in Maryland since January 2021 have been among fully vaccinated individuals.

Treatment and New Variant of Concern

MDH encourages physicians to offer monoclonal antibody treatment to people who test positive for COVID-19 and urges Marylanders who test positive or are exposed to COVID-19 to seek this treatment at one of the more than 80 facilities offering it in the State.

On November 26, 2021, a new COVID-19 variant of concern (Omicron) was identified. No cases of this variant have been identified in the United States as of November 29, 2021.

For further information contact: Jennifer.Chasse@mlis.state.md.us

Health and Health Insurance

Opioid Epidemic

After overdose deaths in Maryland declined for the first time in 2019, overdose deaths for the first six months of 2021 have surpassed the first six months of all prior years on record. While heroin-related overdose fatalities have continued to decline, fentanyl- and prescription-related overdose fatalities have increased. The Opioid Operational Command Center has addressed the opioid epidemic through grants and funding for local Opioid Intervention Teams, and the General Assembly has passed legislation to expand substance use disorder treatment and strengthen the Prescription Drug Monitoring Program.

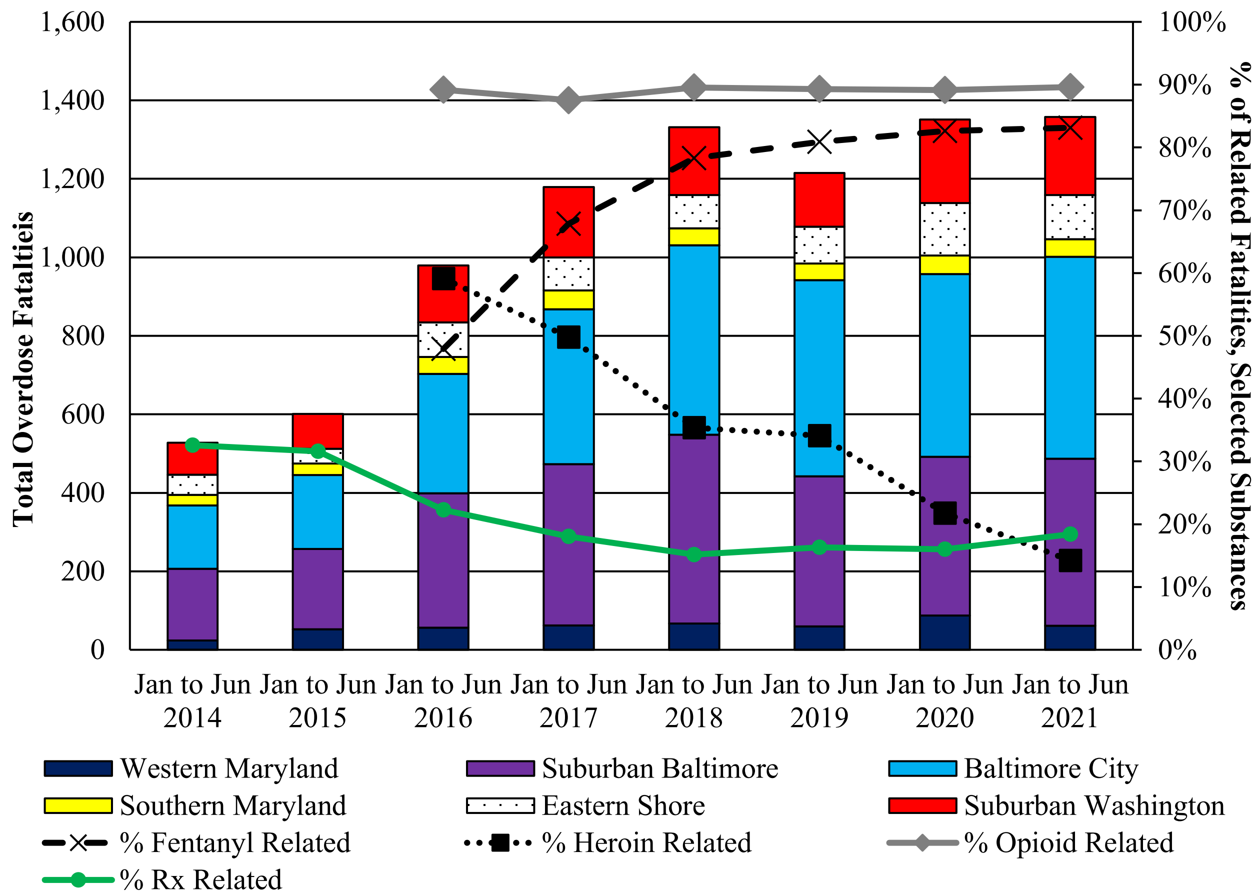
Opioid-related Deaths in Maryland

Maryland continues to be among the states hit hardest by the opioid epidemic with the fourth-highest overdose death rate in the nation, according to the most recent federal data. The State showed signs of reversing this troubling trend in 2019 when overdose fatalities were lower than the previous year for the first time since reporting became available in 2010. However, with the start of the COVID-19 pandemic, the first six months of calendar 2020 showed an increase in year-over-year overdose fatalities from 2019. In addition, the number of fatalities for the first six months of both 2020 and 2021 surpassed the number of fatalities for the first six months of 2018 (the previous high watermark for fatalities in the State). As **Exhibit 1** shows, preliminary data from the Opioid Operational Command Center (OOCC) indicates that the first six months of 2021 have surpassed the first six months of all prior years on record.

Exhibit 1 also shows overdose deaths in each region of the State. In calendar 2018 through 2020, Baltimore City outpaced the total number of overdoses in the five surrounding counties combined. The preliminary counts for 2021 show this trend is likely to continue.

Further, Exhibit 1 shows the share of overdose fatalities that were opioid-, fentanyl-, heroin-, and prescription-related. In each period examined, opioid-related fatalities comprised nearly 90% of all overdoses in the State. However, the opioids contributing to these fatalities have changed in recent years. The prevalence of heroin in drug fatalities in the State has continued to decline, while the presence of fentanyl has continued to climb. For the first six months of 2021, over 83% of overdose deaths were fentanyl related. While other opioids continue to contribute to opioid-related fatalities in the State, fatalities that do not involve fentanyl are increasingly rare. Prescription-related fatalities made up over 18% of all fatalities in the first six months of 2021. This is more than a 2% increase from the same timeframe in 2020 after decreasing or remaining stagnant since 2014.

Exhibit 1
Overdose Fatalities in Maryland by Region and Related Substances
First Six Months, Calendar 2014 to 2021



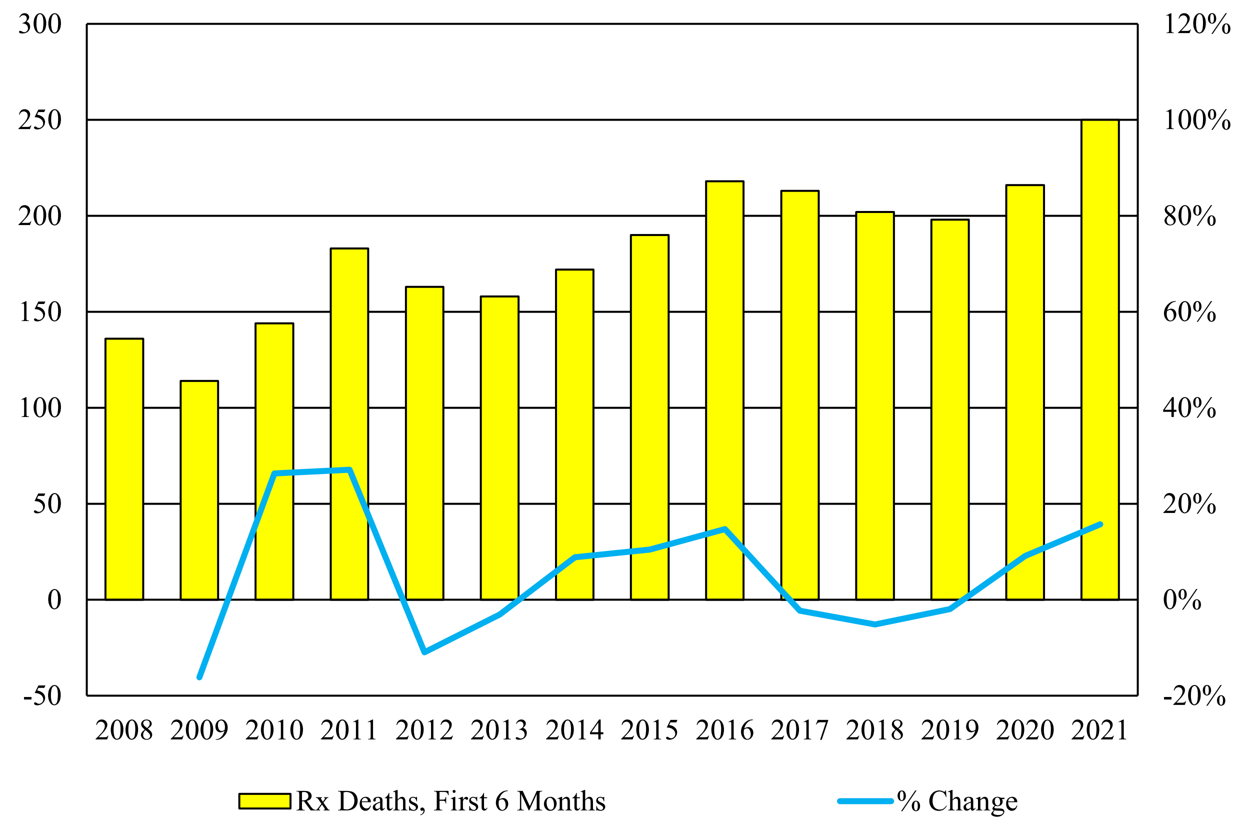
Rx: prescription

Note: Eastern Shore (Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester counties); Southern Maryland (Calvert, Charles, and St. Mary's counties); Suburban Baltimore (Anne Arundel, Baltimore, Carroll, Harford, and Howard counties); Suburban Washington (Frederick, Montgomery, and Prince George's counties); Western Maryland (Allegany, Garrett, and Washington counties)

Source: Maryland Department of Health; Department of Legislative Services

Exhibit 2 shows a more in-depth view of the growing number of prescription-related opioid fatalities. The number of prescription-related fatalities increased by 9% when comparing the first six months of 2019 to 2020 and by 16% when comparing the first six months of 2020 to 2021. In addition, the first six months of 2021 saw more prescription-related opioid fatalities than the same period for any prior year.

Exhibit 2
Prescription-related Opioid Fatalities in Maryland
First Six Months, Calendar 2008 to 2021



Rx: prescription

Source: Maryland Department of Health; Department of Legislative Services

Maryland's Ongoing Response to the Opioid Crisis

Governor Lawrence J. Hogan, Jr.'s Administration has continued efforts to respond to the opioid epidemic through OOCC. OOCC awarded nearly $10 million in grants for fiscal 2022 to assist in combating the opioid crisis, including approximately $5.5 million in competitive grants and approximately $4 million in block grants across the State. OOCC also coordinates and provides funding to local Opioid Intervention Teams, which are multiagency bodies in each of the 24 jurisdictions that address the opioid crisis on the local level.

During the 2021 session, the General Assembly passed legislation to expand Medicaid reimbursement for health care services provided through telehealth. Chapters 70 and 71 of 2021 specifically require reimbursement of behavioral health services, including counseling and treatment for substance use disorders.

Recent Updates to the Prescription Drug Monitoring Program

The Prescription Drug Monitoring Program (PDMP) collects and securely stores information on drugs that contain controlled substances and are dispensed to patients in Maryland. Drug dispensers, including pharmacies and health care practitioners, electronically report the information that is stored in the PDMP database. During the 2020 session, the General Assembly passed legislation (Chapter 290 of 2020) altering the definition of "pharmacist" to include a pharmacist licensed by another state to dispense monitored prescription drugs for the purposes of registering with PDMP. Chapter 290 also adds failure to comply with the requirements of PDMP to disciplinary grounds for dentists, physicians, and physician assistants by the appropriate health occupations board. In addition, Chapters 229 and 230 of 2020 require a health practitioner to issue a prescription for a controlled dangerous substance electronically, except under specified circumstances. A pharmacist may dispense a drug on a written or oral prescription for a controlled dangerous substance that meets the exception requirements, but a pharmacist is not required to verify that the prescription is an authorized exception to the electronic prescription requirement.

For further information contact: Amber.Gundlach@mlis.state.md.us/Andrew.Garrison@mlis.state.md.us

Health and Health Insurance

Legal Developments in Reproductive Health Care

In 2021, the Supreme Court was asked to rule on the legality of two abortion laws enacted in Mississippi and Texas. The Court's decisions on these cases could have a significant impact on access to abortion services. Maryland law currently protects abortion access regardless of the decisions of the Court, but the Court's ruling could authorize the passage of more restrictive laws.

Recent Supreme Court Developments

Two abortion laws, from Mississippi and Texas, recently reached the U.S. Supreme Court and are being followed closely by advocates on both sides of the abortion debate. The outcome in each of these cases will influence future legislative activity regarding abortion on both the state and federal level.

Mississippi's Gestational Age Act

In 2018, Mississippi passed the Gestational Age Act, which prohibits abortions from being performed after 15 weeks gestation except in medical emergencies and cases of severe fetal abnormalities. A physician who provides an abortion in violation of the law is subject to revocation of licensure as well as monetary penalties. The law was held to be invalid by the lower courts, on the grounds that it bans pre-viability abortions, in violation of the U.S. Supreme Court's ruling in *Planned Parenthood of Se. Pa. v. Casey*, 505. U.S. 833 (1992). Petitioners seeking to overturn the lower court decisions and reinstate the law argue that the U.S. Supreme Court should overturn existing abortion precedents, including *Casey* and *Roe v. Wade*, 410 U.S. 113 (1973). The petitioners have argued that previous cases set confusing and inconsistent guidelines for determining the constitutionality of abortion laws and that the state has a compelling interest in implementing laws that protect women and unborn children. The U.S. Supreme Court is scheduled to hear oral arguments on this case on December 1, 2021.

The Texas Heartbeat Act

The Texas Heartbeat Act took effect in September 2021. The law prohibits the performance of any abortion after the detection of a fetal heartbeat. Rather than putting the burden of enforcement on the state (as the Mississippi law does), the Texas law allows any individual to bring a civil suit against any person who "performs or induces an abortion" or "knowingly engages in conduct that aids or abets the performance or inducement of an abortion, including paying for or reimbursing the costs of abortion through insurance or otherwise…regardless of whether the person knew or should have known the abortion would be performed or induced." If the civil suit is successful, claimants are entitled to damages of at least $10,000 per abortion as well as attorney's fees and costs.

In September 2021, the U.S. Supreme Court declined to hear a case challenging the validity of the Texas law based on procedural grounds, pointing to the law's reliance on lawsuits by private citizens as a means of enforcement rather than on state action. In order for the Court to have the authority to determine the legality of a law, precedent has established that there must be an imminent threat of harm. The Court reasoned that since no lawsuit had yet been filed pursuant to the law (as the law had not yet taken effect), and since there was no direct evidence that anyone specifically intended to file such a lawsuit, it was not appropriate to decide on the validity of the law at that time. However, the Court explicitly stated that their decision was "not based on any conclusion about the constitutionality of Texas's law."

In October 2021, the U.S. Department of Justice filed a new challenge to the law in District Court. The Department argued that the law violates the Equal Protection Clause of the Fourteenth Amendment and the Supremacy Clause of the U.S. Constitution, which prohibits states from interfering with the federal government's exercise of its constitutional powers. The District Court agreed and ordered suspension of the law, but the law was quickly reinstated by the U.S. Court of Appeals for the Fifth Circuit. This decision has been appealed to the U.S. Supreme Court, which heard the case on November 1, 2021. A decision in the case is expected by summer 2022.

Federal and Maryland Abortion Laws

Federal abortion laws set a floor regarding the minimum protections given to abortion access, but states are free to enact laws preserving or establishing broader access. In Maryland, § 20–209 of the Health – General Article codifies the protections granted to abortion access by *Roe* and *Casey* by establishing that the State may not interfere with an abortion conducted (1) before viability or (2) at any point, if the procedure is necessary to protect the health or life of the woman or in cases of fetal defect, deformity, or abnormality.

The federal Hyde amendment prohibits the use of federal funds to pay for an abortion unless the pregnancy is the result of rape or incest or is determined to endanger the life of the pregnant woman. For over 40 years, the Hyde amendment has been attached to the annual congressional appropriations bill for the Department of Health and Human Services. In Maryland, language attached to the Medicaid budget since 1979 authorizes the use of State funds to pay for abortions under specific circumstances. Specifically, a physician or surgeon must certify that, based on his or her professional opinion, the procedure is necessary. Similar language has been attached to the appropriation for the Maryland Children's Health Program since its advent in fiscal 1999. Women eligible for Medicaid solely due to a pregnancy do not currently qualify for a State-funded abortion.

Potential Impact of U.S. Supreme Court Decisions in Maryland

Even if the U.S. Supreme Court overturns precedent set by previous cases involving abortion, abortion access in Maryland would remain unchanged due to the provisions of § 20–209 Health – General Article. The Court's decision would be unlikely to invalidate existing abortion laws, so states would be free to adopt or maintain laws granting broader abortion access than Supreme Court decision might provide. However, any state would also be able to implement more restrictive abortion laws consistent with the decision of the Court.

For further information contact: Elisabeth.Chaney@mlis.state.md.us

Health and Health Insurance

Public Health Impacts of Cannabis Legalization

A primary concern regarding legalization of adult-use cannabis is the potential impact on public health. Research indicates both positive and negative health effects, with adverse impacts greater for youth and pregnant women. A 2020 review found that data from states with adult-use laws does not indicate major changes in use, heavy use, or cannabis use disorder. Should Maryland pursue legalization, there are several options that could minimize the potential health and safety impacts.

Cannabis Legalization in the United States

Although illegal at the federal level, states began legalizing cannabis for medical purposes in 1996, and for nonmedical adult use in 2012. As of June 2021, medical cannabis is legal in 36 states and the District of Columbia and adult-use cannabis is legal in 18 states and District of Columbia. Medical cannabis has been available in Maryland since 2017. In recent years, the General Assembly has demonstrated interest in legalizing adult-use cannabis. A primary concern is the potential impact on public health. For a discussion of other issues related to legalization, please see "Legalization of Cannabis" within the Criminal Law section of this *Issue Papers of the 2022 Legislative Session*.

Health Effects of Cannabis

Research indicates that cannabis can have both positive and negative health effects. A 2017 report from the National Academies of Sciences found substantial evidence that cannabis is effective in treating chronic pain in adults, chemotherapy-induced nausea and vomiting, and multiple sclerosis spasticity, and limited evidence that cannabis is effective for improving anxiety and Posttraumatic Stress Disorder. Adverse effects include rapid heartbeat and decreased blood pressure among new users, Amotivational Syndrome, Cannabis Hyperemesis Syndrome, and cannabis use disorder (CUD). The increased potency of cannabis is also a concern as the tetrahydrocannabinol (THC) concentration tripled to 12% from 1995 to 2014. According to the U.S. Surgeon General, higher doses of THC are more likely to produce anxiety, agitation, paranoia, and psychosis.

Adverse impacts may be greater for youth and pregnant women. Multiple studies have found that cannabis alters brain structure and function in youth who regularly use cannabis, which affects learning, IQ, motivation, long-term academic and career outcomes, and mental health. A 2020 U.S. Surgeon General's Advisory raised concerns about the effects of cannabis on a developing fetus, including brain development and low birth weight.

Maryland Medical Cannabis Commission – BOTEC Analysis

In 2020, the Maryland Medical Cannabis Commission (MMCC) commissioned a study by BOTEC Analysis to review the health and public safety effects of medical and adult-use cannabis, including the impact of legalization on youth and adult use, CUD, hospitalizations, poison control calls, and traffic accidents. The analysis noted challenges in measuring impacts, including the lack of sufficient pre-legalization data and that most data related to usage is self-reported. Overall, the analysis found that available data does not indicate major changes in use, heavy use, or CUD.

Youth Use

In Colorado, which legalized adult-use cannabis in 2012, there was no statistical change in youth use rates from 2009 to 2019. In Washington, there was no change in youth use rates in the three years post-legalization. In Massachusetts, which legalized adult-use cannabis in 2016, Youth Risk Behavior Surveillance baseline data from 2007 to 2017 showed a drop in reported youth use. Findings in Colorado, Washington, and Massachusetts are consistent with national trends in which overall cannabis use among teens in all states has decreased. However, youth perception of the harms associated with cannabis use has also decreased post-legalization.

Adult Use

As expected, cannabis use by individuals age 21 and older increased post-legalization. In Colorado, the percentage of adults who reported usage in the past 30 days increased the largest amount (from 3% in 2014 to 9.3% in 2019) among individuals age 65 and older. The overall frequency of adult use remained relatively stable post-legalization, with 44.3% of adults reporting daily use in 2014 and 48.2% in 2019.

Cannabis Use Disorder

CUD is a medical diagnosis when an individual has a problematic pattern of cannabis use leading to clinically significant impairment or distress. A comprehensive study that focused on Alaska, Colorado, Oregon, and Washington found an increase in adolescent CUD (from 2.18% to 2.72%) post-legalization. This increase was 25% higher in these states than in states without legalization. Among individuals age 26 and older, CUD within the past year increased from 0.90% to 1.23%. Conversely, a study of Washington two years post-legalization showed a decline in CUD consistent with states that have not legalized cannabis.

Hospitalizations and Poison Control Calls

The 2020 report, *Impacts of Marijuana Legalization in Colorado*, found the greatest increase in marijuana-related hospitalizations occurred prior to adult-use legalization. Between 2010 and 2013, hospitalizations nearly doubled from 1,260 to 2,446 per 100,000. The increase continued through 2016, when there were 3,516 marijuana-related hospitalizations per 100,000. Since 2016, the numbers have been stable, with 3,515 hospitalizations per 100,000 in 2019. The number of calls to poison control related to marijuana exposure increased considerably in

Colorado, according to the Rocky Mountain Poison and Drug Center, increasing from 127 calls in 2013, to 223 in 2014, and 276 in 2019. While the initial increase occurred among all age groups, the most significant increase was among children age 5 and younger.

Traffic Accidents and Driving under the Influence of Cannabis

Findings regarding the effect of cannabis legalization on traffic accidents are mixed, and no causal link between legalization and traffic accidents has been established. The National Highway Transport Safety Administration has found no clear correlation between levels of THC and road safety. The impact of legalization on traffic accidents is also difficult to measure due to the absence of baseline data. In addition, states that legalize adult-use cannabis often enact specific testing protocols or cannabis-specific "driving under the influence" laws that increase incidence reporting.

According to the Rocky Mountain High Intensity Drug Trafficking Area Program, since 2013, Colorado traffic deaths in which drivers tested positive for marijuana increased 135%, while all traffic deaths increased 24%. Since legalization, traffic deaths involving drivers who tested positive for marijuana more than doubled (from 55 in 2013 to 129 in 2019), and the percentage of all traffic deaths that were marijuana-related increased from 15% in 2013 to 25% in 2019.

Legislative Efforts to Address the Health Impacts of Legalization

States that have legalized cannabis have addressed health concerns in various ways. Colorado and Washington, which were the first states to legalize cannabis, required reports on the health effects of legalization. Colorado requires the state Department of Public Health and Environment and a designated health panel to study the effects of legal cannabis every two years. Washington requires benefit-cost evaluations through 2032. Recently, states have attempted to address health concerns in a more comprehensive manner, as demonstrated by four states that passed adult-use laws in 2021.

Connecticut

Connecticut's law establishes a program to collect information on cannabis-associated adverse events, injuries, and poisoning. The law caps potency and prohibits cannabis-related advertising to individuals younger than 21. The Department of Consumer Protection must develop health, safety, and security requirements related to product design, serving size, labeling, and lab testing. The state's Alcohol and Drug Policy Council must make recommendations on efforts to promote public health and science-based harm reduction, mitigate misuse and the risk of addiction, and treat cannabis addiction with a focus on those younger than 21. The agencies must report on the impacts of legalization on education, mental health, and the social and emotional health of those younger than 21. The law also increases the number of officers to be trained in advanced roadside impaired driving enforcement and earmarks 25% of revenues from retail sales of cannabis for substance misuse prevention, treatment, and recovery services.

New Mexico

New Mexico's law establishes a Cannabis Control Division to develop rules on advertising; health and safety; testing, labeling, and packaging; quality control; environmental protections; and cannabis training and education programs. Advertising is prohibited on television, radio, and mass transit, and advertisers may not use predatory marketing targeting minors. The New Mexico Department of Health must monitor information on cannabis use and changes in the use of cannabis products, opioids, and alcohol. A public health and safety advisory committee must report on the health effects of legalization, including youth access, workplace safety, road safety, and consumer safety, and the affordability and accessibility of medical cannabis.

New York

New York's law creates an Office of Cannabis Management (OCM) to implement quality assurance regulations for the manufacturing, packaging, labeling, advertising, and testing. All cannabis products must contain warning labels notifying consumers of potential harms and expected effects. Packaging must be child-resistant; and packages, labels, and products may not be attractive to youth. All cannabis products must be tested by a third-party laboratory before sale. OCM must also develop and implement a comprehensive public health monitoring and surveillance program to measure indicators such as frequency of use, quantity used, youth use, traffic safety impacts, substitution effects, emergency room visits, and other health and safety metrics. In addition, 20% of all adult-use cannabis tax revenue will be dedicated to public health education and substance-use prevention programs.

Virginia

Virginia's law establishes a Cannabis Public Health Advisory Council to advise the Cannabis Control Authority on health-related matters. The law includes best practices to prevent youth access, including banning advertising attractive to youth, prohibiting retail cannabis stores near schools, mandating warning labels and child-prevention locks, and requiring public education campaigns. The law allocates 25% of cannabis sales tax revenues for substance abuse prevention and treatment and 5% for public health programs.

Considerations for Legalization in Maryland

In addition to adopting health policies similar to those of other states, Maryland could minimize the potential health and safety impacts of cannabis legalization in a number of ways. According to MMCC, consideration should be given to funding for improved data collection, potency and strength restrictions, penalties for sales to minors and compliance check systems, training and use of drug recognition experts, and public outreach through prevention and education campaigns. Maryland's medical cannabis program requires products to be tested by independent laboratories and includes advertising restrictions and labeling requirements. These health and safety policies could also be utilized if Maryland adopts an adult-use law.

For further information contact: Erin.Hopwood@mlis.state.md.us

Health and Health Insurance

Status of Health Care Reform and Maryland's Insurance Market

Health insurance coverage generally increased in 2021. Rates will increase an average of 2.1% in the individual market and 5.0% in the small group market in 2022. Several initiatives are in place to increase enrollment and make coverage more affordable, including enhanced federal premium subsidies, a new State young adult subsidy, and efforts to assist unemployment insurance claimants. The State Reinsurance Program, which has reduced premiums and helped to stabilize the individual market, is nearing renewal of its federal waiver in 2023. Federal legislation to protect consumers against surprise medical bills takes effect in 2022.

Health Care Coverage in Maryland

Since the passage of the federal Patient Protection and Affordable Care Act (ACA), the percentage of uninsured Marylanders declined from 11.3% in 2010 to 6.0% in 2019. Although the COVID-19 pandemic was anticipated to increase the number of uninsured, recent estimates suggest that Maryland's uninsured rate had a statistically significant decline in 2020, outperforming most states. The largest gains in health care coverage in Maryland since passage of the ACA have occurred through the expansion of Medicaid, with 410,114 individuals enrolled under the expansion as of September 30, 2021.

Enrollment in qualified health plans (QHP) through the Maryland Health Benefit Exchange (MHBE) increased in 2021, with more than 165,000 individuals enrolled as of September 30, 2021. Enrollees can generally select a plan from one of four levels (bronze, silver, gold, or platinum), each of which covers a different percentage of medical expenses. Most MHBE enrollees (79%) receive a federal advanced premium tax credit (APTC) to help pay their monthly premiums. At 255,000 enrollees, enrollment in the small group market in 2021 is down by 3% following a 2% decline in enrollment in 2020.

Individual and Small Group Market Rates

For calendar 2022, individual market premium rates approved by the Maryland Insurance Administration will increase by an average of 2.1%. This follows three consecutive years of double-digit rate decreases (13.2% in 2019, 10.3% in 2020, and 11.9% in 2021) that coincided with implementation of the State Reinsurance Program (SRP). The overall 2.1% increase is less than half the increase in the average medical claims trend of 4.4%, reflecting the ongoing stabilizing impact of SRP. Deductibles and out-of-pocket expenses for calendar 2022 did not change significantly from calendar 2021. Deductibles range from $5,900 to $8,700 for bronze plans, $2,250 to $6,500 for silver plans, and $0 to $2,900 for gold plans (the most purchased plan).

Small group market rates will increase by an average of 5.0% in calendar 2022, slightly lower than the projected average medical claims trend increase of 5.7%.

Federal and State Affordability and Enrollment Initiatives

Several initiatives at the federal and State level are intended to increase enrollment in QHPs and make them more affordable, including enhanced APTCs under the federal American Rescue Plan Act (ARPA) and Maryland's SRP, the State-Based Young Adult Health Insurance Subsidies Pilot Program, the Coronavirus Emergency Special Enrollment Period (SEP), the Easy Enrollment Health Insurance Program, and an enrollment initiative for unemployment insurance (UI) claimants.

Federal American Rescue Plan Act

Signed into law March 1, 2021, the ARPA significantly increased APTCs available to consumers purchasing coverage through MHBE. APTCs are typically available only to individuals with incomes between 100% and 400% of the federal poverty level (FPL). For calendar 2021 and 2022, the ARPA makes APTCs available for individuals with incomes above 400% FPL and significantly increases APTCs by reducing the maximum percentage of household income a family will pay toward the premium for a benchmark plan. On average, the increased subsidies reduce the premium consumers pay after application of the APTC by 40%. Many individuals have already received a reduction in their 2021 premium and those who have not yet received the extra subsidy will receive it through their 2021 tax refund. With the increased subsidies provided under the ARPA, the 2022 open enrollment period will offer QHPs at the lowest subsidized rate to date.

State Reinsurance Program

Funded by State special funds from a health insurance provider fee assessment and federal pass-through funding, SRP reimburses carriers for 80% of claims incurred between \$20,000 and \$250,000. Payments to carriers are made after the plan year ends, and all costs have been reconciled. Over a three-year period, SRP has reduced individual market premiums by more than 30% and helped stabilize the individual market, which had experienced double-digit rate increases as high as 50% before the program. In 2021, Maryland's lowest cost plans have premiums that range 20% to 30% below national averages, depending on the metal level.

SRP is projected to pay out approximately \$400 million in 2020 (33% of the total \$1.2 billion in paid claims), \$433 million in 2021, and \$492 million in 2022. Through calendar 2021, federal pass-through funding alone has been sufficient to cover costs. After a transfer of \$100 million under the Budget Reconciliation and Financing Act of 2021, SRP is expected have a fund balance of \$478 million (\$369 million in federal pass-through funds and \$109 million in State special funds). Beginning in calendar 2022, federal funding for the program is expected to decrease with annual program costs exceeding combined annual federal and State funding. However, when accounting for the current balance of surplus funds available for future year program costs, the program is adequately funded through 2023.

SRP is authorized under a federal State Innovation Waiver valid through 2023. Thus, should the State wish to continue the program, MHBE must submit a waiver amendment application to the federal government to extend the program. The federal government must be notified of an intention to extend the program by October 1, 2022, and an application must be submitted by March 31, 2023. To extend the program, the State must identify and approve a funding source during the 2022 or 2023 legislative session either by extending the health insurance provider fee assessment beyond 2023 or approving an alternative source of funding.

State-Based Young Adult Health Insurance Subsidies Pilot Program

Chapters 777 and 778 of 2021 required MHBE to establish and implement the State-Based Young Adult Health Insurance Subsidies Pilot Program for calendar 2022 and 2023 to help make health insurance more affordable for uninsured young adults. Under the program, young adults ages 18 to 34 with incomes between 138% and 400% FPL will be eligible for State premium assistance subsidies. At a projected annual cost of $17 million, subsidies will be allocated to reduce the maximum expected premium contribution of individuals age 18 to 30 by 2.5%. For individuals age 31 to 34, the subsidy is progressively lower for each age, reducing the maximum expected contribution by 0.5% each year. Of the 40,646 young adults eligible to be automatically renewed for coverage in 2022, 34,619 will be eligible for a State subsidy under the program.

Coronavirus Emergency Special Enrollment Period

As part of the State's response to COVID-19, MHBE offered a Coronavirus Emergency SEP that began in March 2020, was extended several times, and concluded in August 2021. MHBE reports that more than 201,000 Marylanders enrolled in coverage through the SEP, including more than 74,800 individuals in QHPs and the remainder in Medicaid. Enrollment included individuals from demographic groups significantly impacted by the pandemic, such as 69,749 young adults, 60,555 enrollees self-reporting as Black, and 25,892 enrollees self-reporting as Hispanic.

Maryland Easy Enrollment Health Insurance Program

Established by Chapters 423 and 424 of 2019, the Maryland Easy Enrollment Health Insurance Program allows an uninsured individual to elect on their State income tax return to authorize the Comptroller to share information with MHBE to determine the individual's eligibility for insurance affordability programs. MHBE assists in enrolling individuals in Medicaid or health insurance. More than 33,000 individuals expressed interest in coverage on their tax year 2020 State income tax return. Of this number, more than 27,000 individuals were deemed eligible for coverage and about 3,000 (11%) individuals enrolled in coverage during an SEP during tax time, including 811 individuals in QHPs and the remainder in Medicaid.

Enrollment Initiative for Unemployment Claimants

Chapter 49 of 2021 requires the Maryland Department of Labor (MDL) to begin implementing a system through which a UI claimant may consent to the sharing of relevant information by MDL with MHBE and the Maryland Department of Health to determine whether the individual qualifies for free or low-cost health insurance and, if so, to help the individual enroll. MHBE must open an SEP or other enrollment period for an individual who consents to share the information. The easy enrollment process for UI claimants is expected to be operational by the second quarter of 2022.

New Federal Protections Against Surprise Medical Bills

The federal No Surprises Act was enacted in 2020 to protect consumers against surprise medical bills, the unanticipated out-of-network medical bills that typically arise from visits to the emergency room, the receipt of nonemergency care from out-of-network providers at in-network facilities, or ambulance transportation. Beginning in January 2022, the No Surprises Act requires health insurers to cover these services without prior authorization and by applying in-network patient cost-sharing requirements based on a "recognized" in-network payment rate for the services. Out-of-network providers generally may not balance bill patients beyond the applicable in-network cost-sharing amount for these services. The No Surprises Act gives states a role in enforcing the requirements against the health plans they regulate and provides flexibility to accommodate state laws, such as Maryland's hospital rate setting system and statutory formulas for the payment of services to health maintenance organization enrollees and services provided by certain hospital-based and on-call physicians.

For more information contact: Patrick.Carlson@mlis.state.md.us

Health and Health Insurance

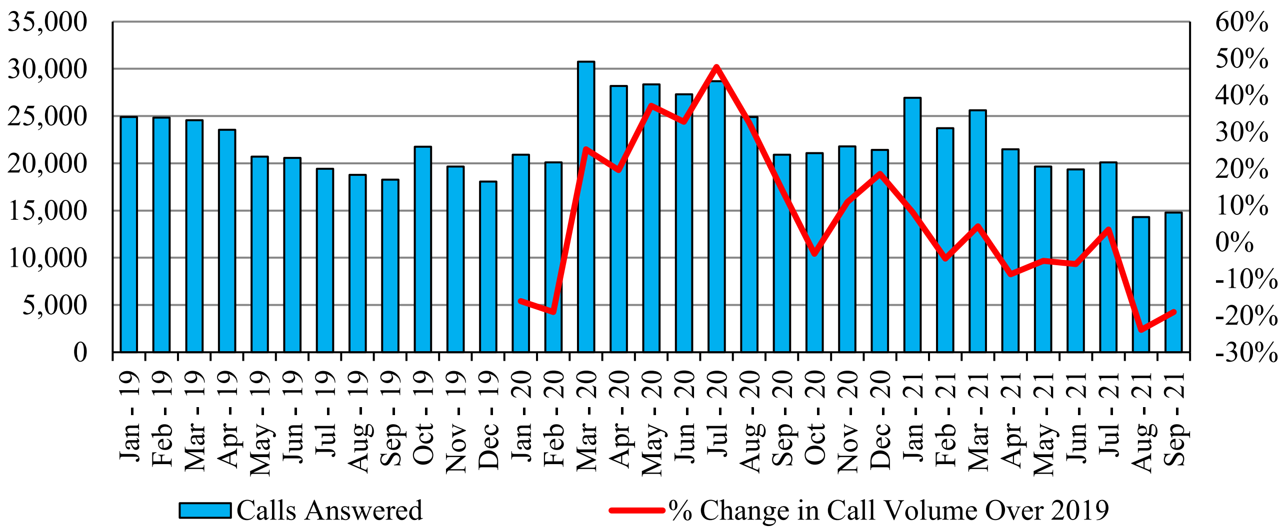
Behavioral Health

The behavioral health of Marylanders continues to be of concern, particularly in light of the COVID-19 pandemic. Although lower than the national rate, the suicide rate in Maryland has increased every year from 2015 to 2019. In addition, calls to 2-1-1 Maryland have increased and Household Pulse Survey data indicated heightened anxiety and depression among Marylanders during the pandemic. During the 2021 legislative session, several laws were enacted to address Maryland's behavioral health needs.

Increases in Crisis Hotline Call Volume

One indicator of the impact of the COVID-19 pandemic on Marylanders' mental health is the increase in calls to 2-1-1 Maryland, the primary information and referral telephone number for health and human services in the State. **Exhibit 1** shows the total calls answered by 2-1-1 Maryland during the pandemic and the change in call volume over the corresponding months in 2019 as a comparison between pandemic and prepandemic call volumes.

Exhibit 1
Call Volume to 2-1-1 Maryland and Change Over 2019
January 2019 to September 2021



Source: 2-1-1 Maryland; Department of Legislative Services

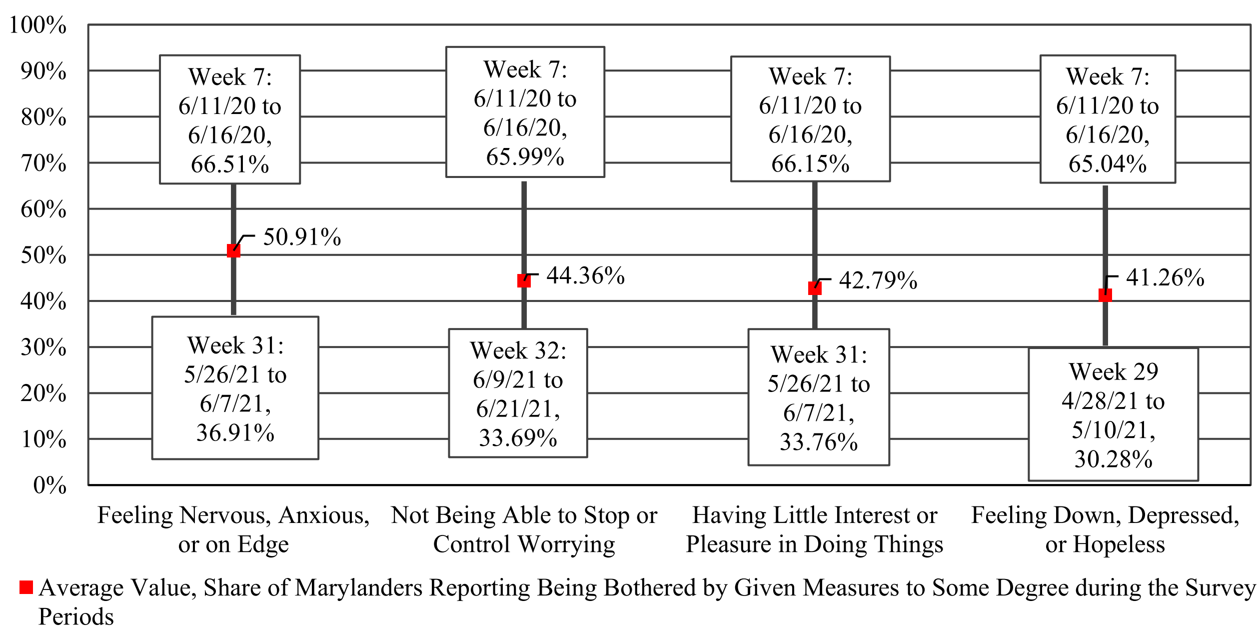
Call volumes during the first two months of 2020 were below those of 2019; however, calls increased significantly in March 2020 when COVID-19 cases were first identified in the State and remained elevated through March 2021 before tapering off to prepandemic levels.

Other helplines in the State have also experienced an increase in call volumes during the pandemic. Here2Help, the behavioral health crisis hotline in Baltimore City, reported a more than 50% increase in call volumes beginning in June 2020. The call volumes remained at an increased level of approximately 30% above prepandemic levels through June 2021.

U.S. Census Bureau Household Pulse Survey

In April 2020, the U.S. Census Bureau began conducting the Household Pulse Survey (HPS) to "provide timely data to help understand the experiences of American households" during the pandemic. HPS sampling has continued to ask American households four questions about mental wellness throughout 2021 – two addressing anxiety and two focusing on depression. **Exhibit 2** shows the average share of Marylanders responding that they have been affected by certain prompts targeting anxiety or depression at least several days during the reporting periods surveyed. Exhibit 2 also identifies the highest and lowest weeks and values in each measure. The highest rates for each measure were reported early in the pandemic during June 2020 while the lowest rates for each measure were reported later in the pandemic from April to June 2021.

Exhibit 2
Marylanders Reporting Anxiety and Depression during COVID-19



Source: U.S. Census Bureau; Department of Legislative Services

Suicide Trends and Overdose Deaths

Even before the COVID-19 pandemic, rates of suicide had been increasing both nationally and in Maryland. In 2019, 656 people died by suicide in Maryland, a rate of 10.9 per 100,000 residents. While Maryland has consistently been below the national suicide rate and has a lower rate than all but four other states, the rate of suicide for Marylanders has increased every year from 2015 to 2019 (the most recent national data available).

The *Journal of American Medicine* identifies several risk factors for suicide that may be heightened by the pandemic, including economic stress and reduction in labor force participation due in part to parents caring for children learning from home, social isolation caused by social distancing, and increased barriers to adequate mental health care. Without access to more data from the pandemic period, it is impossible to know what effect these factors may have on the suicide rate as the pandemic persists.

To the extent that the pandemic is increasing social isolation, decreasing economic wellbeing, and adding barriers to care, these same factors could be contributing to the greater number of overdose deaths observed statewide. Intoxication fatality data from the Opioid Operational Command Center indicates an increase in unintentional intoxication fatalities from all substances of 17.65% from 2019 to 2020. The increase in unintentional intoxication fatalities persists as the number of deaths (1,358) occurring during the first six months of 2021 is on par with the number of deaths (1,351) for the same timeframe in 2020. For further discussion of this issue, see "The Opioid Epidemic" within the Health and Health Insurance section of this *Issue Papers of the 2022 Session*.

Recent Legislation Addressing Behavioral Health Needs

During the 2021 legislative session several laws were enacted to address the behavioral health needs of Marylanders.

Telehealth

Chapters 70 and 71 of 2021 expand health insurance coverage and reimbursement requirements for health care services provided through telehealth, including counseling and treatment for substance use disorders and mental health conditions.

Crisis Response

Chapters 66 and 67 of 2021 require the Maryland Department of Health (MDH) to make recommendations regarding the establishment of an opt-in mental health services phone call program that requires a call center to make periodic calls to people who have opted in. Chapters 755 and 756 of 2021 require a crisis communication center to coordinate with 3-1-1, 2-1-1, or other local mental health hotlines. Chapters 755 and 756 also modify the priorities for awarding grants to local behavioral health authorities; extend a mandated appropriation of $5 million through fiscal 2025; and require that, beginning in fiscal 2023, one-third of the mandated appropriation be used to award competitive grants to fund mobile crisis teams.

Youth Access

Additional legislation was enacted to specifically address the mental health needs of the State's youth. Chapter 743 of 2021 lowers the age from 16 to 12 for a minor, who is determined by a health care provider to be mature and capable of giving informed consent, to consent to consultation, diagnosis, and treatment of a mental or emotional disorder (with the exception that a minor under age 16 may not consent to prescription medications for the treatment of a mental or emotional disorder).

Trauma-Informed Care and Adverse Childhood Experiences

Chapters 722 and 723 of 2021 establish the Commission on Trauma-Informed Care in the Department of Human Services to study and implement a program to screen for adverse childhood experiences (ACE) and toxic stress and provide targeted, evidence-based interventions to support individual and family health. Chapters 569 and 570 of 2021 require the Maryland State Department of Education, in coordination with MDH, to include at least five questions from the U.S. Centers for Disease Control and Prevention's Youth Risk Behavior Survey on ACEs or positive childhood experiences in the Youth Risk Behavior Survey/Youth Tobacco Survey.

For further information contact: Amber.Gundlach@mlis.state.md.us

Health and Health Insurance

Health Equity in Maryland

Health equity issues persist in Maryland, particularly related to COVID-19 deaths, maternal and infant mortality rates, incidence of HIV, mortality rates from cancer and heart disease, and emergency department visits. In 2021, the General Assembly passed legislation to establish the Maryland Commission on Health Equity, designate Health Equity Resource Communities, and provide aid and assistance to the Maryland Office of Minority Health and Health Disparities.

Health Equity

The World Health Organization defines health equity "as the absence of unfair and avoidable or remediable differences in health among population groups defined socially, economically, demographically or geographically." Health equity exists when each individual, regardless of race, sex, socioeconomic status, geographic location, or other societal construct has the same access, opportunity, and resources to achieve that individual's highest potential for health. Inversely, Healthy People 2020 defines health disparity as "a particular type of health difference that is closely linked with social, economic, and/or environmental disadvantage." Racial and ethnic minorities are more likely to experience poor health outcomes because of their social determinants of health, including access to health care, education, employment, economic stability, housing, public safety, and neighborhood and environmental factors.

Key Health Equity Issues in Maryland

Data consistently shows ongoing and, in some cases, growing health disparities in Maryland, including in the impact of COVID-19; maternal and infant mortality; incidence of HIV; age-adjusted mortality from cancer and heart disease; and emergency department visits for substance use, asthma, diabetes, and hypertension. Specifically:

- while Black individuals comprise 29.8% of the Maryland population, they represent 36% of COVID-19 deaths as of October 19, 2021;
- Maryland's maternal mortality rate for Black women is 3.7 times that of White women, and the racial disparity has widened in recent years;
- Maryland's infant mortality rate for all races/ethnicities has remained level but remains highest (9.3 deaths per 1,000 in 2019) among the Black non-Hispanic population, more than twice the rate for the White non-Hispanic population (4.1 deaths per 1,000 in 2019);

- the incidence of HIV for all races/ethnicities has generally declined in Maryland, although the incidence among the Black non-Hispanic population (49.0 incidences per 100,000) remains 2.4 times that of the total population;

- the age-adjusted mortality rate from cancer and heart disease remains significantly higher for the Black non-Hispanic population; and

- in 2017, emergency department visits for the Black non-Hispanic population were 50% higher than all races/ethnicities and twice the rate for the White non-Hispanic population for substance use disorder; nearly twice that of all races/ethnicities and 3.3 times that of the White non-Hispanic population for asthma-related emergency department visits; 86% higher than all races/ethnicities and more than twice that of the White non-Hispanic population for diabetes-related emergency department visits; and 89% higher than all races/ethnicities and more than twice that of the White non-Hispanic population for hypertension-related emergency department visits.

2021 Legislation

During the 2021 session, the General Assembly passed several bills related to improving health equity in Maryland.

Chapters 749 and 750 of 2021 establish the Maryland Commission on Health Equity to (1) employ a "health equity framework" in specified examinations; (2) provide advice on issues of racial, ethnic, cultural, or socioeconomic health disparities; (3) facilitate coordination of expertise and experience in developing a comprehensive health equity plan addressing the social determinants of health; and (4) set goals for health equity and prepare a plan for the State to achieve health equity in alignment with other statewide planning activities. The commission is required to submit an annual report by December 1 of each year.

The commission held its first meeting on October 18, 2021, and has formed a data advisory committee to make recommendations on data collection and a health equity policy committee to advise on the implementation of the health equity framework. The commission will also support the Statewide Integrated Health Improvement Strategy, which aligns efforts to reduce health outcome disparities in maternal and child health, overdose mortality, and diabetes.

Chapter 742 of 2021 establishes a process for designating "Health Equity Resource Communities" (HERC) to target State resources to specific areas of the State to reduce health disparities, improve health outcomes and access to primary care, promote prevention services, and reduce health care costs and hospital admissions and readmissions. Chapter 742 establishes a HERC Advisory Committee and HERC Reserve Fund and authorizes incentives for health care practitioners or community health workers that practice in a HERC. In fiscal 2023 through 2025, the Governor must transfer $15.0 million from the Maryland Health Benefit Exchange Fund to the HERC Reserve Fund as an appropriation in the State budget. The Maryland Community Health Resources Commission (MCHRC) must establish a Pathways to Health Equity Program to provide the foundation and guidance for a permanent HERC program and provide grant funding to specified entities.

On October 12, 2021, MCHRC issued the Pathways to Health Equity request for proposals, and grant proposals are due to MCHRC in December 2021. Following a review period, MCHRC is anticipated to issue the Pathways awards in the beginning of 2022. MCHRC will submit updates on the Pathways awards to the Governor and General Assembly in December 2021 and during the 2022 legislative session.

A central effort to address health disparities in Maryland was the establishment of the Maryland Office of Minority Health and Health Disparities (OMHHD) in the Maryland Department of Health (MDH) in 2004. In 2021, the General Assembly passed several bills pertaining to OMHHD. Chapters 761 and 762 require the Director of OMHHD to meet with representatives from the Maryland Health Care Commission and MDH at least annually to examine the collection of health data that includes race and ethnicity information in the State and identify any changes for improving such data that is accessible by OMHHD. Chapters 744 and 745 require OMHHD to identify and approve implicit bias training programs that must be recognized by a health occupations board or accredited by the Accreditation Council for Continuing Medical Education and require an appropriation for OMHHD that is the greater of either $1,788,314 or 0.012% of the total funds appropriated to MDH in that fiscal year, beginning in fiscal 2023.

For further information contact: Matthew.Carpenter@mlis.state.md.us

Health and Health Insurance

Health Care Facility and Workforce Issues

Twenty months into the COVID-19 pandemic, a staffing shortage continues to significantly impact health care facilities, with approximately 2,600 vacant hospital nursing positions in the State. Hospitals are resorting to expensive staffing alternatives such as travel nurses. Potential solutions to address the shortage include increasing compensation, mandating safe staff-to-patient ratios, and providing additional mental health support for health care workers.

Nationwide Staffing Shortage

One of the most significant issues impacting health care facilities and the health care workforce is a nationwide staffing shortage. Twenty months into the COVID-19 pandemic, hospitals and other health care facilities are losing staff at unprecedented rates. Departing staff cite low compensation, posttraumatic stress disorder (PTSD) symptoms, lack of appreciation, workplace violence, and their own physical health as reasons for retiring or leaving for other positions. Many remaining staff are turning to travel work, which compensates staff at a higher rate. Hospitals are resorting to expensive alternatives to traditional hiring and are adjusting staffing assignments in ways that may worsen working conditions for remaining staff and lead to suboptimal care for patients.

Maryland Hospitals Face Nursing Shortage

In the second half of calendar 2020, Maryland hospitals were operating at surge capacity to meet patient needs. By the end of calendar 2021, some facilities are leaving patient beds empty, despite continued need, due to staffing shortages. There are approximately 2,600 vacant nursing positions in hospitals in the State. Due to short staffing, nurses may be assigned to treat more patients than usual and less experienced nurses may be assigned to care for patients that require advanced training. These conditions are more likely to lead to burnout and an early exit from the health care workforce. Health care facilities cannot operate at full capacity without adequate staff.

The most common approach used by hospitals to fill immediate staffing needs is to use travel staff. To hire travel staff, a hospital contracts with a staffing agency that provides temporary staff and ensures staff are adequately licensed and trained. Hospitals pay the staffing agency, which in turn pays the travel staff and provides the travel staff with employee benefits. The rates hospitals pay staffing agencies, and the rates travel staff earn are much higher than those offered to staff hired directly by a hospital.

From January through October 2021, 35 nurses from the Johns Hopkins Pediatric Intensive Care Unit left to become travel nurses. In response, the hospital closed four beds in the Pediatric

Intensive Care Unit and began aggressively recruiting travel nurses. Hopkins is waiving standard clauses in travel nurse contracts that typically benefit hospitals and recruiting nurses from within Maryland despite normally not accepting travel nurses from within 50 miles of the hospital.

According to the U.S. Bureau of Labor and Statistics, the average hourly wage for a registered nurse (RN) in Maryland was $38.37 in May 2020. Johns Hopkins and the University of Maryland Medical Center are offering travel RNs rates around $125 per hour. University of Maryland Medical Center is also offering a $1,500 bonus to nurses who complete four overtime shifts in a month; $2,500 if those shifts are on weekends. Though specific data was not available, it is widely reported that rural hospitals are facing greater difficulty recruiting staff. The Maryland Hospital Association reports that its members spent $210 million on temporary staff in 2019. Maryland Hospital Association members anticipate spending $490 million in 2021 and up to $650 million in 2022 on temporary staff.

Vaccination Mandate for Health Care Workers

In August 2021, Maryland implemented a COVID-19 vaccination mandate for employees of all Maryland hospitals and nursing homes (as well as other State congregate care facilities). Vaccine mandates do not appear to be a significant contributor to staffing shortages in Maryland hospitals and instead may bolster staffing levels by preventing staff absences due to illness. The Maryland Hospital Association reports that 95% of hospital workers have received at least one dose, with an additional 2% to 3% granted medical or religious exemptions. Hospital systems have reported fewer than 1% of employees, on average, leaving due to a vaccine mandate. As of November 1, 2021, 86.9% of nursing home staff are fully vaccinated and 89.0% have received one dose.

Proposed Solutions

Immediate solutions proposed by economists, employee advocates, health care workers, and industry groups to boost retention and recruitment include increasing compensation for health care workers, mandating safe staff-to-patient ratios, and providing additional mental health support for health care workers. Higher base compensation rates for full-time employees and other financial incentives would minimize the incentive for staff to leave or accept travel assignments. Lower staff-to-patient ratios allow for higher quality of care and safer work environments. Mental health support can mitigate the risk of depression, anxiety, and PTSD.

For further information contact: Lindsay.Rowe@mlis.state.md.us/Tyler.Babich@mlis.state.md.us

Health and Health Insurance

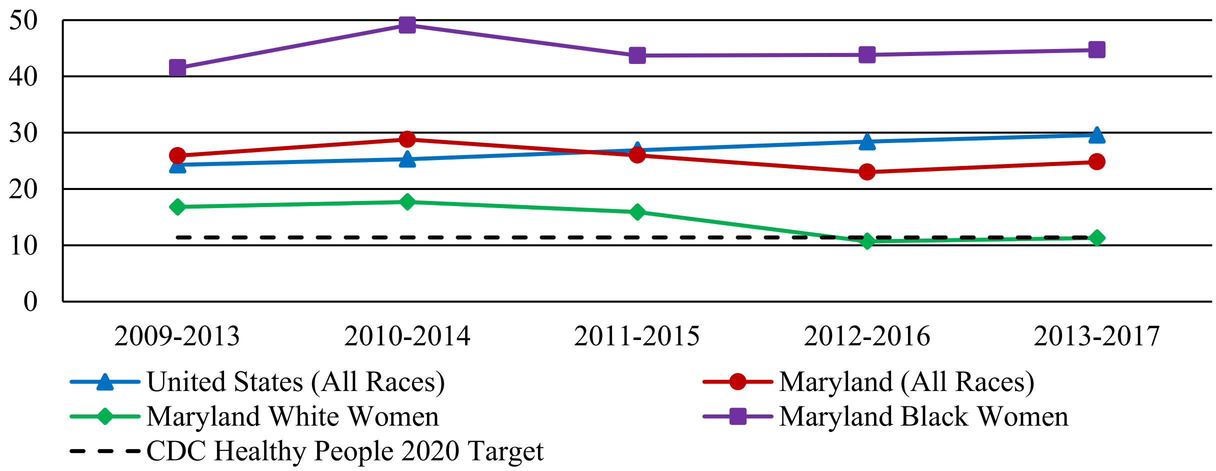
Maternal Mortality

While Maryland's overall maternal mortality rate has improved marginally, it remains high ranking at twenty-second in the nation with racial disparities worsening. The opioid crisis and COVID-19 pandemic have further impacted maternal mortality. Maryland enacted legislation to address maternal mortality in 2021 and additional efforts are underway to support maternal and child health (MCH), including the Maternal Opioid Misuse Model and funding through the Regional Partnership Catalyst Program which will provide a total of $72 million in funding (including Medicaid matching funds) for MCH efforts in Medicaid and the Prevention and Health Promotion Administration.

Recent Trends in Maternal Mortality

Maternal mortality rates are based on pregnancy-related maternal deaths that occur during or within 42 days of pregnancy. From a low of 6.6 maternal deaths per 100,000 live births in 1987, the five-year average U.S. maternal mortality rate (MMR) for calendar 2013 to 2017 grew more than fourfold to 29.6 maternal deaths. **Exhibit 1** reflects the latest available data on MMR.

Exhibit 1
Five-year Average Maternal Mortality Rates
Maternal Deaths Per 100,000 Live Births
Calendar 2009-2013 to Calendar 2013-2017



CDC: U.S. Centers for Disease Control and Prevention

Source: *Maryland Maternal Mortality Review* 2015-2019 Annual Reports; Maryland Department of Health

While the U.S. MMR rose steadily, Maryland's MMR (all races) decreased by 4.3% and fell below the U.S. rate. Despite this slight improvement, Maryland's five-year average MMR for calendar 2013 to 2017 (24.8) ranks twenty-second in the nation and remains more than double the federal Healthy People 2020 goal of 11.7. Furthermore, racial disparities among the State's MMRs have worsened. Beginning in 2016, five-year average MMRs among White residents met the Healthy People 2020 Target, with 10.7 and 11.3 maternal deaths per 100,000 live births during the 2012-2016 and 2013-2017 periods, respectively. During the same periods, average MMRs among Black residents rose to 43.8 and 44.7, respectively. In 2013, Black people in Maryland experienced MMRs about 2.4 times higher than White people. By 2017, this disparity grew, with MMRs among Black residents almost 4.0 times higher than White residents.

Maryland's Maternal Mortality Review Committee (MMRC) investigates nonpregnancy-related deaths occurring up to 365 days after pregnancy. MMRC found further racial disparities using this broader definition of maternal mortality, with non-Hispanic Black people being overrepresented in the share of nonpregnancy-related deaths (43%) compared to their share of the State's population in 2017 (approximately 30%).

Impact of the Opioid Crisis and COVID-19 on Maternal Mortality

Substance use with unintentional overdose was the leading cause of nonpregnancy-related death in 2017. MMRC identified 20 maternal deaths caused by substance use with unintentional overdose, the highest number of overdose maternal deaths reported in one year. Preliminary data reflect increasing overdose fatalities during COVID-19. The Maryland Department of Health (MDH) reported growth rates of 5.7% for unintentional overdose deaths and 6.3% for opioid-related deaths between January and March 2020 and January and March 2021. Due to data lags, the number of maternal deaths during the pandemic is not yet available, but initial trends suggest that maternal mortality caused by substance use has increased.

The pandemic is expected to further worsen maternal mortality as pregnant people are at increased risk of pregnancy complications, severe illness, and death from COVID-19. On September 29, 2021, the U.S. Centers for Disease Control and Prevention issued a health advisory encouraging COVID-19 vaccination before or during pregnancy to mitigate this risk, especially as vaccination rates among pregnant people remain lower than nonpregnant people.

As of October 16, 2021, only 34.3% of pregnant people age 18 to 49 in the United States were fully vaccinated compared with about 69% of all adults age 18 and older. Vaccination rates among pregnant people also showed underlying disparities by race and ethnicity, with only 18.8% of non-Hispanic Black pregnant people and 29.7% of Hispanic pregnant people being fully vaccinated compared to 36.1% of non-Hispanic White pregnant people and 49.2% of non-Hispanic Asian pregnant people. In combination, the increased risk of severe outcomes from COVID-19, lower vaccination rates, and uneven vaccination rates by race and ethnicity are likely to exacerbate MMRs, especially among minority communities.

State Legislation to Address Maternal Mortality

The following legislation enacted during the 2021 session relates to maternal and child health (MCH) services in the State and plays a role in reducing maternal mortality.

- ***Licensure of Certified Midwives:*** Chapters 462 and 463 of 2021 establish a licensing and regulatory system for certified midwives to expand the number of midwives practicing in Maryland.

- ***Postpartum Medicaid Eligibility:*** Chapter 470 of 2021 requires Medicaid to extend medical and dental coverage for pregnant people with family incomes up to 250% of the federal poverty level for one year postpartum. The federal American Rescue Plan Act of 2021 also gave states the option to extend postpartum coverage from 60 days to one year through a State Plan Amendment, beginning April 1, 2022. MDH plans to seek a State Plan Amendment extending postpartum coverage in April 2022.

- ***Maryland Prenatal and Infant Care Grant Program Fund:*** Chapters 494 and 495 of 2021 rename the Maryland Prenatal and Infant Care Coordination Services Grant Program Fund as the Maryland Prenatal and Infant Care Grant Program Fund and expand the fund's purpose to include grants to federally qualified health centers, hospitals, and providers of prenatal care to increase access to prenatal care, including behavioral and oral health. The Acts also increase the amount of funding the Governor must appropriate to the fund to $1.1 million in fiscal 2023, $2.1 million in fiscal 2024, and $3.1 million in fiscal 2025 and annually thereafter.

Other Efforts Supporting Maternal and Child Health

Maternal Opioid Misuse Model

Recognizing the surge in maternal deaths caused by substance use, the federal Centers for Medicare and Medicaid Services (CMS) executed cooperative agreements with states to implement Maternal Opioid Misuse (MOM) Models to serve pregnant Medicaid and Children's Health Insurance Program beneficiaries with opioid-use disorder. Maryland was one of 10 states chosen to implement the MOM Model from calendar 2020 to 2024. Maryland will receive $3.6 million to collaborate with managed care organizations (MCO) in improving care and service delivery. The State may receive an additional $1.5 million if it meets performance targets. CMS allowed states to delay implementation by six months due to COVID-19, and Maryland began implementation of the model on July 1, 2021.

Regional Partnership Catalyst Program

On March 17, 2021, CMS approved Maryland's proposed Statewide Integrated Health Improvement Strategy that includes MCH as one of three population health priorities. By prioritizing MCH outcomes, MDH and the Health Services Cost Review Commission (HSCRC) can align statewide efforts and incentivize the State's health care delivery system to reduce the severe maternal morbidity (illness) rate and asthma-related emergency department visits.

HSCRC reserved funds from the Regional Partnership Catalyst Program for MCH and will transfer $8 million of this funding to Medicaid and $2 million to MDH's Prevention and Health Promotion Administration (PHPA) annually over four years. Ultimately, this funding will total $72 million after accounting for 50% federal matching funds claimed for Medicaid expenditures. In partnership with MCOs, Medicaid will use its annual allocation as follows:

- ***Home Visiting Services Pilot Expansion:*** This pilot program has operated since 2017 to offer evidence-based home visiting services to Medicaid-eligible, high-risk pregnant people and children up to age 2. Funding will be used to allow more high-risk pregnant people to access health and social support.

- ***Medicaid Coverage of Doula Services:*** Birth and postpartum doulas offer physical support, emotional support, and evidence-based information and advocacy to mothers and families. Medicaid will begin reimbursing doula services for Medicaid enrollees effective January 1, 2022, to improve birth outcomes.

- ***CenteringPregnancy:*** This program supports a clinic-based, group prenatal care model for low-risk pregnancies in which facilitators guide participants through a curriculum of interactive prenatal care visits.

- ***HealthySteps:*** This clinic-based, pediatric primary care model screens children up to age 3 and their families and places them into risk-stratified supports. Services include care coordination and on-site intervention (there are two existing locations in Baltimore City).

- ***MOM Model Expansion:*** Expansion will allow more pregnant people with opioid-use disorder to receive enhanced care coordination and case management. Medicaid also plans to provide intensive case management for high-risk pregnancies not eligible for the model.

PHPA will use its fiscal 2021 allocation to support $1.25 million for the Asthma Home Visiting Program, which serves children enrolled in or eligible for Medicaid and the Maryland Children's Health Program based on a diagnosis of asthma or lead poisoning, and $750,000 to develop an Eliminating Disparities in Maternal Health Initiative to provide funding to jurisdictions with elevated severe maternal morbidity rates.

For further information contact: Anne.Wagner@mlis.state.md.us

Health and Health Insurance

Maryland's Total Cost of Care Model

In calendar 2019, the State entered a new Total Cost of Care Model (TCOC) intended to transform care delivery, improve health and quality of care, and contain costs. In the first two years, Maryland has met or exceeded all goals, including significant annual Medicare savings. In 2021, the first independent evaluation of TCOC was released, as well as an evaluation of the Maryland Primary Care Program, a component of TCOC.

Overview of the Total Cost of Care Model

In July 2018, Maryland and the federal Center for Medicare and Medicaid Innovation (CMMI) agreed to the terms of a new Total Cost of Care Model (TCOC). The model, effective January 1, 2019, builds on the State's prior All-Payer Model Contract that was in effect between calendar 2014 through 2018. TCOC is designed to (1) improve population health; (2) improve care outcomes for individuals; and (3) control growth in the total cost of care for Medicare beneficiaries. To accomplish these goals, the model is designed to move beyond hospitals to address Medicare patients' care in the community. TCOC will continue for 10 years, provided the State meets the requirements of the agreement.

Under TCOC, Maryland commits to reaching an annual Medicare savings target of $300 million through the end of calendar 2023 (program year five) in Medicare Part A (*e.g.*, hospital services) and Part B (*e.g.*, doctor office visits, preventive services, and other non-hospital services). Based on the current savings requirements of the base model, All-Payer Model Contract and TCOC are estimated to result in cumulative savings to Medicare of $1.934 billion by the end of calendar 2023. Prior to the end of calendar 2022 (program year four), CMMI will assess the State's progress and determine if TCOC is on track to meet its savings goal. By the end of calendar 2023, CMMI and Maryland will establish the formula for the allowable Medicare cost growth rate for the remaining five years of TCOC.

Continued Success under the Total Cost of Care Model

In June 2021, CMMI certified the program requirements for the State for calendar 2020 (program year two). **Exhibit 1** shows the State's performance on each of the goals evaluated by CMMI for TCOC in calendar 2019 and 2020. The State has met or exceeded each of the goals in both calendar 2019 and 2020.

Exhibit 1
Total Cost of Care Model Performance for Calendar 2019 and 2020

	Calendar 2019/Program Year One		Calendar 2020/Program Year Two	
	Goal	**Performance**	**Goal**	**Performance**
Annual Medicare Savings*	$120 million	$364.9 million	$156 million	$390.6 million
Total Cost of Care Guardrail	Not to exceed national Medicare growth in total cost of care by more than 1%	0.6% below national Medicare growth	Not to exceed national Medicare growth in total cost of care by more than 1%	0.5% below national Medicare growth
All-payer Revenue Limit	Growth ≤ 3.58% per capita annually	2.50%	Growth ≤ 3.58% per capita annually	0.21%
Reductions in Hospital-acquired Conditions	Not to exceed calendar 2018 rates for potentially preventable conditions	0.13% average reduction below calendar 2018	Not to exceed calendar 2018 rates for potentially preventable conditions	0.06% average reduction below calendar 2018
Reduction in Readmissions	≤ national rate for fee-for-service Medicare beneficiaries (15.52% for calendar 2019)	14.94%	≤ national rate for fee-for-service Medicare beneficiaries (15.55% for calendar 2020)	15.18%
Hospital Revenue Population Based Payment	At least 95% of regulated revenue paid according to population-based methodology	98.00%	At least 95% of regulated revenue paid according to population-based methodology	97.90%

*The State's overperformance in annual Medicare savings produces savings in the following model year, as outlined under the contract with the Center for Medicare and Medicaid Innovation. Savings carried over in calendar 2019 totaled $122.42 million and $117.3 million in calendar 2020.

Source: Department of Legislative Services

Of note, the State significantly surpassed the goals regarding annual Medicare savings in each certified model year, reaching savings of $364.9 million in calendar 2019 and $390.6 million in calendar 2020. The State has been able to carry additional savings into the following model years. The savings target for calendar 2021 is $222 million, over half of which the State has already been able to achieve given the savings level achieved in calendar 2020.

Independent Evaluation of the Total Cost of Care Model

In July 2021, CMMI released the first report for the independent evaluation of TCOC, which used program data from calendar 2019 and 2020. The report found that hospital global budgets remained the largest financial incentive in TCOC, with 29% of hospitals participating in the Episode Care Improvement Program (which allows hospitals to link payments across providers for certain items and services furnished during an episode of care) and frequently partnering with post-acute care facilities. Future reports will assess whether care transformation continues, expands in reach, and succeeds in reducing Medicare total cost of care while improving quality of care and population health.

Maryland Primary Care Program

The TCOC evaluation also looked at the Maryland Primary Care Program (MDPCP), another aspect of TCOC. In the first two model years, 468 primary care practices and 21 Care Transformation Organizations joined MDPCP, reaching 29% of all eligible primary care physicians and 47% of Medicare fee-for-service beneficiaries in the State. In 2019, the federal Centers for Medicare and Medicaid Services paid each participating MDPCP practice an average of $163,751 to support their transformation efforts, increasing a practice's total revenue (across all payers) by about 9%. Payments made through MDPCP count toward the total cost of care.

Given MDPCP's role in TCOC, the budget committees have requested evaluation of the program, with particular focus on whether care management fees are offset by cost savings elsewhere in the State's health care system. While the initial report submitted in calendar 2020 did not find cost savings, a subsequent report submitted in September 2021 suggested a cumulative reduction of 0.5% over the first two years, even after accounting for care management payments to providers. Aggregate savings for the program in 2020 were estimated at $16 million. Further, the September 2021 report found that patients associated with MDPCP providers had a cumulative reduction in inpatient hospital utilization of about 2% over the two program years. The report also projects program growth in calendar 2021, with 53% of all Medicare beneficiaries in the State being attributed to an MDPCP practice.

For further information contact: Andrew.Garrison@mlis.state.md.us

Health and Health Insurance

Medicaid Enrollment and Programmatic Changes

Medicaid enrollment grew rapidly during the COVID-19 pandemic due to related economic impacts and suspension of disenrollment and eligibility redeterminations. Maryland will receive enhanced federal matching funds through January 2022 under the national public health emergency and a year of enhanced funding for home- and community-based services (HCBS). There were numerous programmatic changes to Medicaid in 2021, including expansion of telehealth reimbursement, funding for additional HCBS waiver slots, and maternal and child health population health improvement initiatives. Also pending is expanded coverage for home visiting and doula services.

Current Federal Fund Participation

Maryland's Medical Care Programs, including Medicaid, Maryland Children's Health Program (MCHP), Employed Individuals with Disabilities, and other programs, provide eligible low-income individuals with comprehensive health care coverage. Funding is derived from both federal and State sources with Maryland's Federal Medicaid Assistance Percentage (FMAP), or matching rate in fiscal 2023, set between 50% and 90% depending on the eligibility category, and 65% for MCHP.

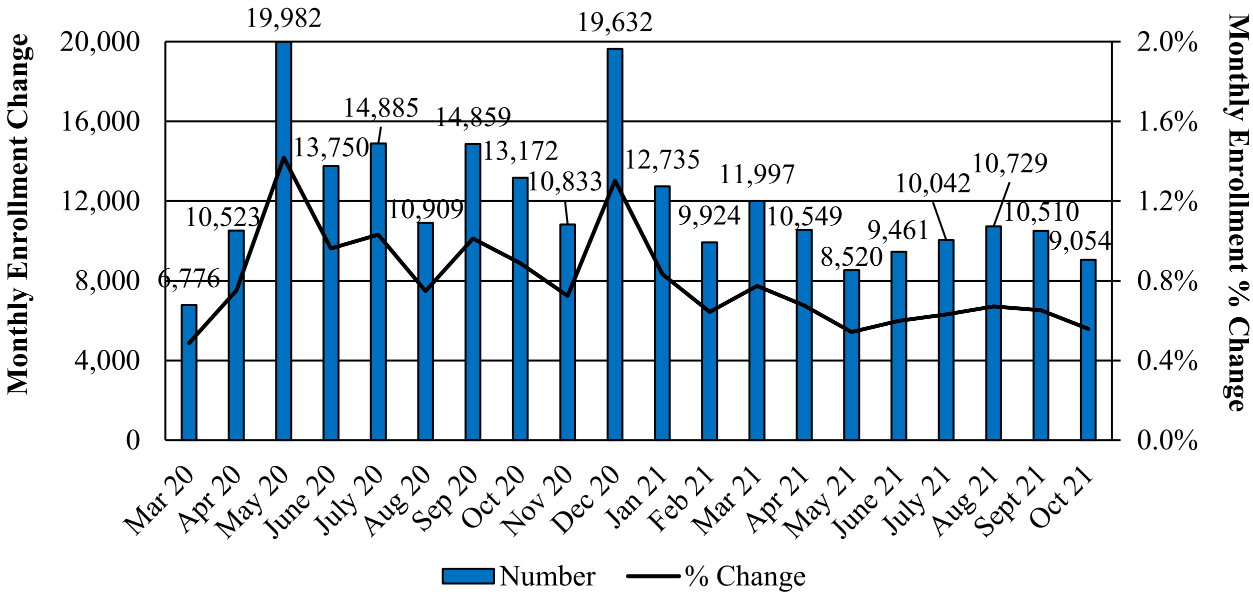
Maryland is eligible for a 6.2% enhanced FMAP on qualifying Medicaid expenses through the last quarter in which the national COVID-19 public health emergency (PHE) ends. To qualify, Maryland Medicaid cannot terminate coverage for those enrolled when the PHE took effect (with limited exceptions) and must cover certain services such as COVID-19 testing without cost-sharing, among other requirements.

Effective April 1, 2021, through March 31, 2022, Maryland also receives a 10% enhanced FMAP for qualifying Medicaid home- and community-based services (HCBS). Enhanced FMAP must be reinvested to enhance, expand, or strengthen Medicaid HCBS by March 31, 2024. Per the fiscal 2022 budget, at least 75% of the enhanced FMAP must be used for a one-time HCBS provider rate increase. In November 2021, the Maryland Department of Health (MDH) announced that HCBS providers will receive between 5.2% and 5.5% rate increases using these funds.

Enrollment Trends and Redetermination Process

Medicaid and MCHP enrollment has grown rapidly on a month-over-month basis during the COVID-19 pandemic, as shown in **Exhibit 1**. Higher caseloads are primarily attributable to higher need resulting from significant pandemic-related economic impacts and the required suspension of disenrollment and eligibility redeterminations as a condition of receiving the enhanced FMAP. Month-over-month enrollment growth peaked at 19,982 enrollees added in May 2020. Recent enrollment growth has leveled off to a range of 8,520 to 11,997 enrollees added in each month from February to October 2021.

Exhibit 1
Medicaid Enrollment – Month-over-month Change
March 2020 to October 2021

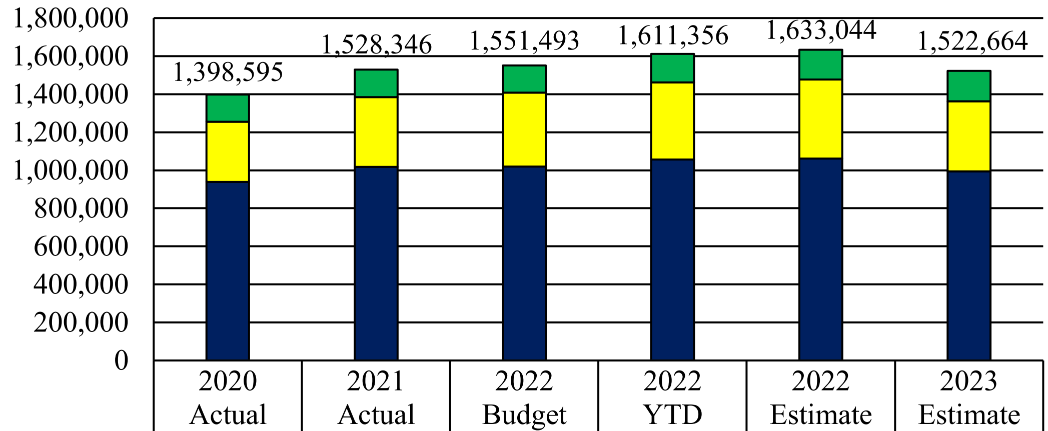


Source: Maryland Department of Health; Department of Legislative Services

In October 2021, the national COVID-19 PHE was extended until January 2022, thereby extending the enhanced FMAP and freeze on disenrollment and eligibility redeterminations. State Medicaid programs can process renewal backlogs over 12 months following the termination of the PHE.

Exhibit 2 displays the Department of Legislative Services' fiscal 2022 and 2023 caseload estimates, which assume that the PHE will not be further extended. The estimated fiscal 2022 caseload continues to rise over prior year and year-to-date enrollment due to the PHE extension and continued freeze on eligibility redeterminations until April 2022. As the PHE was set to terminate in December 2021 when the fiscal 2022 budget was passed, the estimated 1.6 million total enrollment outpaces budgeted enrollment by approximately 80,000 enrollees. Available one-time funding, including unanticipated enhanced FMAP claimed during the third quarter of fiscal 2022, can cover expenditures resulting from higher enrollment.

Exhibit 2
Medicaid and MCHP Average Monthly Enrollment
Fiscal 2020 Actual - Fiscal 2023 Estimate



	2020 Actual	2021 Actual	2022 Budget	2022 YTD	2022 Estimate	2023 Estimate
MCHP	143,031	143,387	143,900	149,656	156,380	160,451
ACA Expansion	316,313	367,288	388,412	405,630	415,674	368,229
Traditional Medicaid	939,251	1,017,671	1,019,181	1,056,070	1,060,990	993,984

ACA: Affordable Care Act
MCHP: Maryland Children's Health Program
YTD: year-to-date

Source: Maryland Department of Health; Department of Budget and Management; Department of Legislative Services

Fiscal 2023 average monthly enrollment is expected to decrease by 110,380 enrollees from the prior year due to the end of the PHE as disenrollment and eligibility redeterminations will resume for the entire fiscal year. However, the fiscal 2023 caseload remains elevated compared to the pre-PHE level due to the lingering economic impacts of the pandemic.

State Legislation Impacting Medicaid

Legislation enacted during the 2021 session altered the Medicaid program, with select changes described below.

- ***Telehealth Services:*** Chapters 70 and 71 of 2021 expand Medicaid reimbursement requirements for health care services delivered through telehealth to include coverage of audio-only telephone conversations (until June 30, 2023) and telehealth services provided appropriately by all types of health care providers. Medicaid must cover telehealth services regardless of the participant's location and, for a two-year period only, reimbursement must be provided on the same basis and at the same rate as if the service were delivered in person.

- ***Budgetary Changes:*** Chapter 357 of 2021 (the fiscal 2022 budget) allocated $10.1 million for 400 new waiver slots under the Community Options HCBS program and $1.8 million to serve 36 individuals in a new Program of All-inclusive Care for the Elderly. Chapter 150 of 2021 (the Budget Reconciliation and Financing Act) established a Maternal and Child Health Population Health Improvement Fund to invest $4 million in fiscal 2022, and $8 million annually from fiscal 2023 to 2026, for Medicaid maternal and child population health.

- ***Postpartum Medicaid Eligibility:*** Chapter 470 of 2021 requires Medicaid to extend coverage for pregnant people with family incomes up to 250% of the federal poverty level for one year postpartum. The federal American Rescue Plan Act also gave states the option to extend postpartum coverage through a State plan amendment (SPA), beginning April 1, 2022. MDH plans to seek an SPA extending postpartum coverage in April 2022.

Other State Plan Amendments and Regulatory Changes

MDH has also made several Medicaid policy and program changes through the following regulations and SPAs.

- ***Value-based Purchasing:*** MDH will sunset the Value-based Purchasing (VBP) program and implement the HealthChoice Population Health Incentive program. Under VBP, managed care organizations (MCO) with scores exceeding certain targets received an incentive payment, while MCOs with scores below the target paid a penalty. Effective January 1, 2022, the new Population Health Incentive program shifts to an incentive-only program with the level of incentives limited to what is provided in the budget.

- ***Nursing Facility Quality Program Changes:*** In response to language in Chapter 565 of 2020 (the fiscal 2020 budget), MDH proposed updates to the nursing facility pay-for-performance quality model. Recommendations made via regulations included modifying how staffing levels are scored.

- ***Family Planning Presumptive Eligibility:*** The Centers for Medicare and Medicaid Services approved an SPA implementing new presumptive eligibility requirements for the Medicaid Family Planning program. Individuals can apply for temporary presumptive eligibility with certain delegate service sites to access a short-term coverage program.

- ***Home Visiting and Doula Services:*** As of November 9, 2021, regulations establishing coverage, requirements, and reimbursement procedures for home visiting services and doula services for pregnant and postpartum people were proposed and are currently pending as a part of the required public comment period. Further discussion of these services can be found in the section “Maternal Mortality” within Health and Health Insurance of this *Issue Papers of the 2022 Legislative Session*.

For further information contact: Anne.Wagner@mlis.state.md.us

Human Services

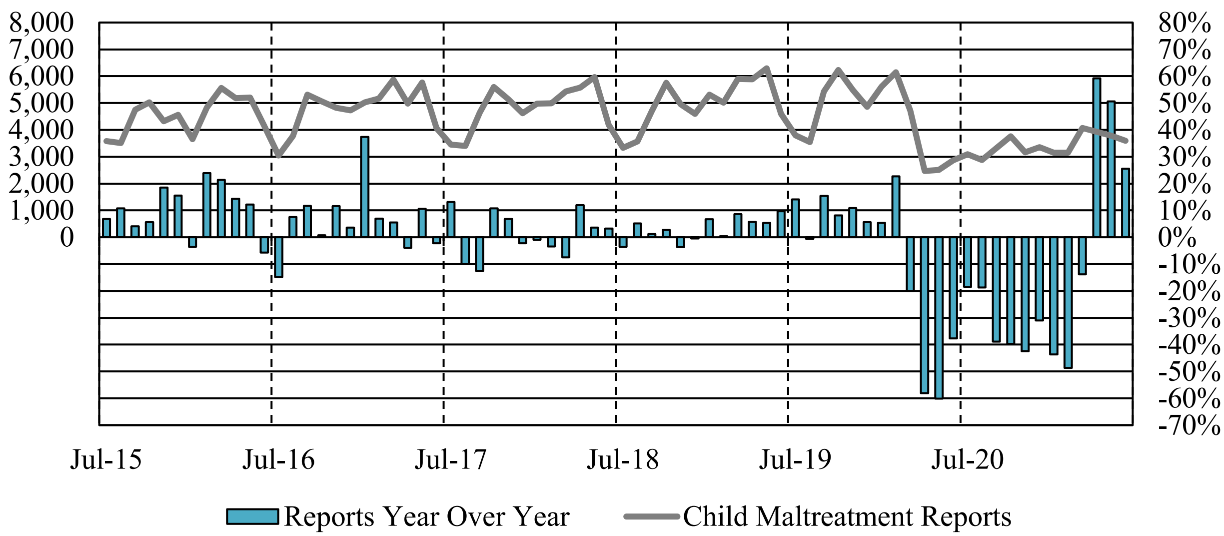
Child Welfare Caseload Trends

Foster care, subsidized adoption, and subsidized guardianship cases declined in 2020 due to fewer child maltreatment reports and reduced court activity. With the return to in-person learning and child care, reports of maltreatment and child welfare caseloads are expected to increase. Additional adoptions and guardianships are also anticipated.

Out of Home Placements Decline

Since March 2020, widespread closures of in-person school, child care facilities, medical visits, and court proceedings due to COVID-19 reduced opportunities for the observation and mandated reporting of child maltreatment. As a result, the number of child maltreatment reports declined dramatically, as shown in **Exhibit 1**. Although reports increased in fiscal 2021 as some in-person activities resumed, the number was significantly lower than prepandemic levels. Child maltreatment reports and child welfare caseloads are anticipated to continue to increase in fiscal 2022, with the resumption of additional in-person activities including public school.

Exhibit 1
Child Maltreatment Reports
July 2015 to June 2021

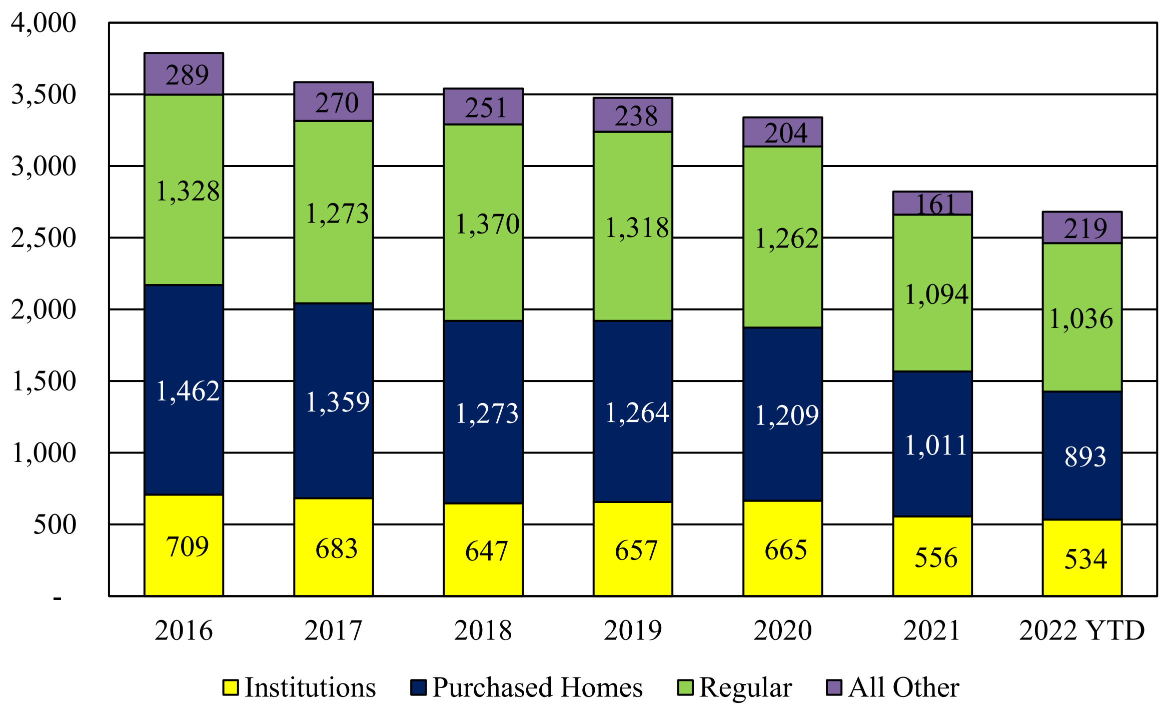


Source: Department of Human Services; Department of Legislative Services

Placement Type Variations

As shown in **Exhibit 2**, the average monthly foster care caseload continued to decrease in fiscal 2021, with a more exaggerated decline than in previous years due to pandemic impacts (15.5% in fiscal 2021 compared to 4% in fiscal 2020). Caseloads declined across all placement types. Outside of the "All Other" category (which includes regular foster care), the largest declines in fiscal 2021 were in purchased homes and institutions (each declined by 16.4%). These placements largely consist of treatment foster homes and other institutional care settings that provide a higher level of care.

Exhibit 2
Average Monthly Foster Care Caseload
Fiscal 2016 to 2022 (through August 2021)



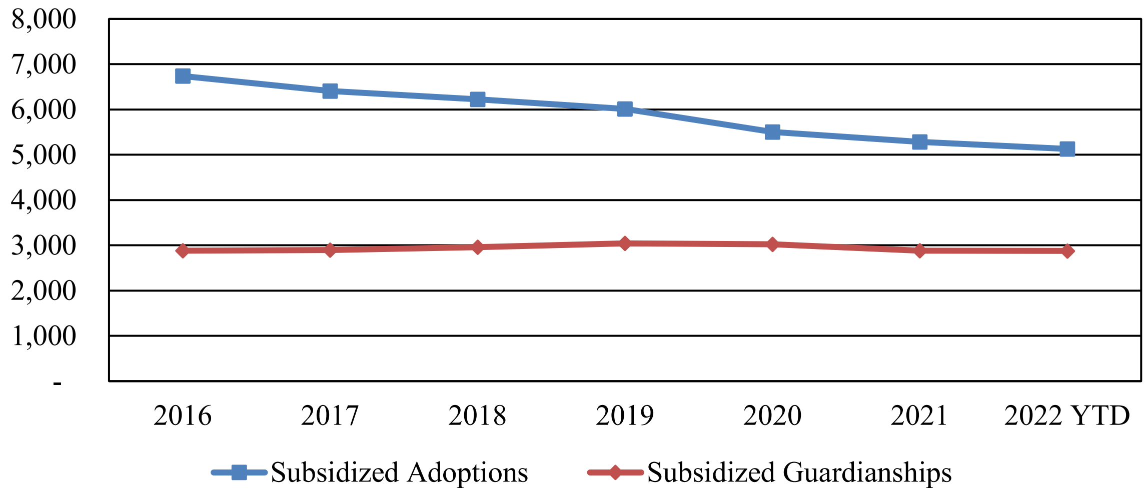
YTD: year to date

Source: Department of Human Services; Department of Legislative Services

In the first two months of fiscal 2022, the average monthly caseload has declined by an additional 5% over the previous year, but declines have been smaller in each category, and caseloads in the "All Other" category have increased. Caseload declines are anticipated to slow to prepandemic levels through the remainder of fiscal 2022.

The average monthly caseload for subsidized adoptions and subsidized guardianships was also impacted by COVID-19, primarily due to closures and reductions in court activities impacting movement into permanency options. As shown in **Exhibit 3**, the average monthly number of subsidized adoptions decreased by 4% in fiscal 2021, and the average monthly number of subsidized guardianships decreased by 4.6%. Both caseload types have continued to decline during the first two months of fiscal 2022, but these declines have been lower than in fiscal 2021. Caseload numbers are anticipated to increase for the remainder of fiscal 2022 toward prepandemic levels as courts resume full operations resulting in additional movement of children into permanency options.

Exhibit 3
Average Monthly Subsidized Adoption and Guardianships Caseload
Fiscal 2016 to 2022 (through August 2021)



Source: Department of Human Services; Department of Legislative Services

Purchased Homes and Institutional Costs

Child welfare costs are anticipated to be impacted in fiscal 2022 by provider rate increases, particularly for institutional and purchased home placements that have the highest average monthly costs. Providers with rates set by the Interagency Rates Committee may receive rate increases of up to 6% over the originally approved rates for fiscal 2021 (or 2% over the temporary 4% rate increase provided during the second half of fiscal 2021).

Average monthly placement costs for purchased institutions were $13,510 in fiscal 2021, an increase of approximately 26% over fiscal 2020. Average monthly placement costs for purchased homes were $4,787 in fiscal 2021, an increase of approximately 11% over fiscal 2020.

Through the first two months of fiscal 2022, average monthly placement costs have increased to $14,319 for purchased institutions and $5,026 for purchased homes. As a result of the increased costs of these placement types combined with the projected increase in caseloads, the Department of Legislative Services projects a shortfall of approximately $15 million in fiscal 2022.

Implementation of the Family First Prevention Services Act

The federal Family First Prevention Services Act (FFPSA), included in the Bipartisan Budget Act of 2018, was signed into law in February 2018. Among other provisions, the FFPSA alters allowable uses of Title IV-E funding by expanding the eligibility of states to receive reimbursement for prevention services (for the first time outside of a waiver) in addition to the traditional use of such funds for administration and placement costs. The FFPSA also includes provisions amending the eligibility for federal reimbursement for certain nonfamily placements, including Qualified Residential Treatment Programs (QRTP), to promote the placement of children in the least-restrictive, ideally family-based, setting appropriate to their individual needs.

To access federal fund reimbursements for prevention services under the FFPSA, states were required to submit a five-year prevention program plan and a Title IV-E state plan amendment for approval. The prevention program plan of the Department of Human Services (DHS) was approved in February 2020, and the department continues to implement eight evidence-based practices in fiscal 2022. DHS's Title IV-E State plan amendment, including provisions related to reimbursements for placements in nonfamily-based settings (including QRTPs), was approved in May 2021. With this approval, DHS can claim federal reimbursement for QRTPs as of April 2021. However, as of July 2021, no QRTPs have been designated. DHS reports that it has worked with the Department of Juvenile Services to develop an application process for the designation of placement providers as QRTPs. Applications will be open from September through November 2021, and designation will occur in December 2021. DHS also submitted a revised Cost Allocation Plan (CAP) in December 2020. Once approved, the CAP will allow DHS, as necessary, to claim reimbursement for prevention services retroactively from October 2019.

Human Services

Public Assistance Caseload Trends

At the onset of the COVID-19 pandemic, public assistance caseloads rose dramatically. Temporary Cash Assistance (TCA) and Temporary Disability Assistance Program caseloads fell but have stabilized in recent months, while Supplemental Nutrition Assistance Program (SNAP) caseloads remain high. With the anticipated restart of eligibility recertifications in January 2022, caseloads for TCA and SNAP are expected to decline further.

Public Assistance Programs

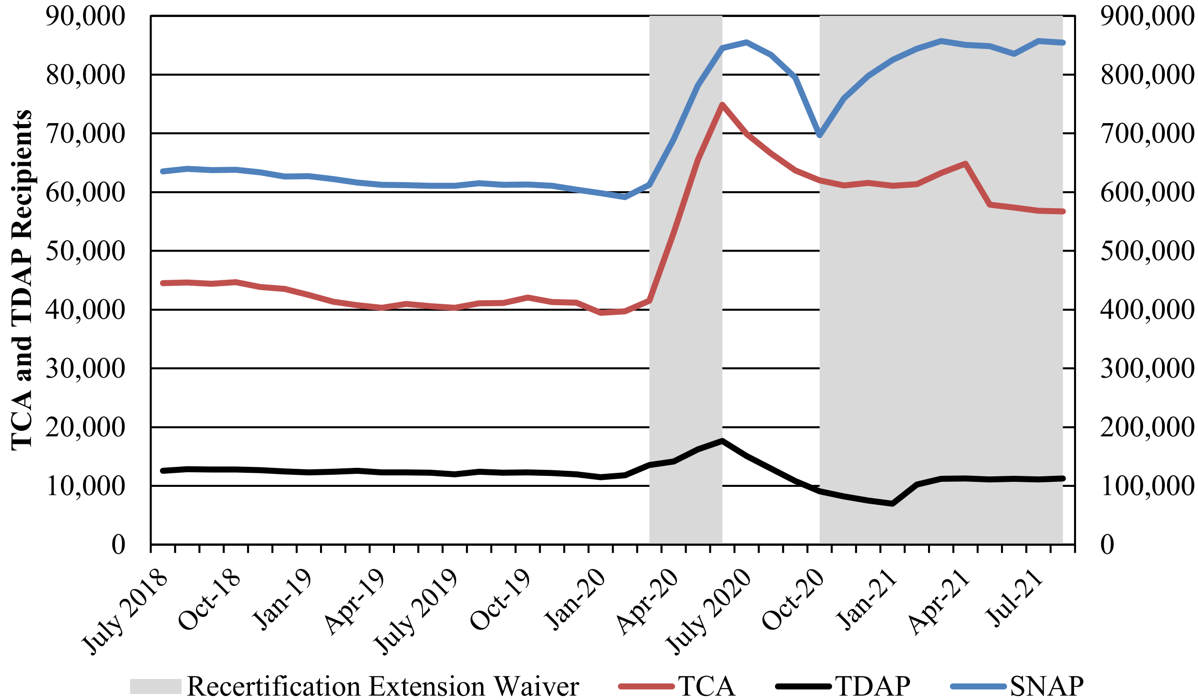
Temporary Cash Assistance (TCA) provides monthly cash grants to needy children and their parents or caretaker relatives and is funded with general funds, federal Temporary Assistance for Needy Families (TANF) funds, and certain child support collections. The Temporary Disability Assistance Program (TDAP) is a State program for disabled adults that provides a limited cash benefit for individuals with a short-term disability or for individuals with a long-term disability awaiting approval for federal disability benefits. The Supplemental Nutrition Assistance Program (SNAP) is a 100% federally funded benefit that helps low-income households purchase food. The State offers a supplemental benefit to SNAP that ensures that households with a member who is at least 62 years old receive a benefit of at least $30 per month.

COVID-19 Impact on Caseloads

Prior to the COVID-19 pandemic, the number of recipients of TCA, TDAP, and SNAP had generally declined for several years. The number of TCA recipients was at an all-time program low from January 2018 through February 2020, and SNAP and TDAP enrollment were at the lowest levels since the early parts of the Great Recession.

As shown in **Exhibit 1**, the number of recipients in each program experienced a dramatic and largely unprecedented caseload increase during the COVID-19 pandemic. TCA and TDAP caseloads peaked in June 2020, while SNAP peaked in July 2020, with the highest number of recipients since July 2005. The number of recipients has since exceeded the Great Recession peak.

Exhibit 1
Recipients Enrolled in Public Assistance Programs
July 2018 to August 2021



SNAP: Supplemental Nutrition Assistance Program
TCA: Temporary Cash Assistance
TDAP: Temporary Disability Assistance Program

Source: Department of Human Services; U.S. Department of Agriculture; Department of Legislative Services

The dramatic enrollment increases resulted from several factors, including spikes in applications among all programs, waivers of requirements or changes in required timeframes to submit documentation, waivers of interview requirements, and extensions on eligibility recertification periods. While several of these waivers and the extension on recertification periods have continued, there have been some changes over time or periods in which the waivers were not in effect. For example, the extension on recertifications ended temporarily in July 2020 but began again in mid-October 2020. The interview-related waivers had similar breaks in authorization. As a result of the temporary end to some COVID-19 flexibilities, the number of recipients began to decline. When these flexibilities were reinstated, the number of SNAP recipients again climbed dramatically, with a second higher peak of recipients. TCA recipients generally stabilized before increasing in the spring and then beginning to decline in May 2021.

Despite the reinstated flexibilities, the number of TDAP recipients continued to decrease to historic program lows. By January 2021, the number of TDAP recipients (6,966) was approximately 41% below the February 2020 level. The continued decline was attributed in part to the reinstatement of requirements to submit certain documents, including medical certifications. Access to medical care continued to be difficult during this period, and postal issues and other access issues limited the ability to submit documentation. Chapter 39 of 2021 (RELIEF Act) required the Department of Human Services (DHS) to reenroll TDAP recipients denied benefits on or after July 1, 2020, (except for reasons related to a final determination on Social Security benefits) and prohibited most case closures. As a result, the number of TDAP recipients returned to a level nearer prepandemic levels by March 2021 and has remained relatively stable since that time.

Although initially scheduled to end in September 2021 due to the end of Maryland's COVID-19 state of emergency on July 1, 2021, DHS indicates that it received a waiver that allows the extension on recertifications to continue through December 2021. In recent months, DHS has occasionally requested recertification and only extended it if documents were not submitted, which has allowed some declines in caseloads.

The Department of Legislative Services (DLS) projects caseloads to remain relatively stable until the end of the recertification extensions for TCA and SNAP. Overall, DLS anticipates a decline of 12.3% in the average monthly caseload (54,848) for TCA compared to fiscal 2021 and a 16.3% decline for SNAP (378,589), with smaller declines in fiscal 2023. Both programs are expected to remain elevated compared to prepandemic levels in fiscal 2023. The average monthly number of TDAP recipients is projected to increase by 7% in fiscal 2022 due to the artificially low number in fiscal 2021. Generally, DLS projects the TDAP caseload will remain relatively steady from August 2020 levels through fiscal 2023.

The SNAP Supplemental Benefit for Seniors program has effectively been suspended throughout the pandemic due to the authorization of emergency allotments under which all households receive the maximum benefit for their household size. The suspension will continue throughout the issuance of emergency allotments. DHS has received a waiver to allow the benefit to continue through November 2021. Future approvals are considered on a month-to-month basis.

Benefit Levels

COVID-19 Response Additional Benefit

In December 2020, Governor Lawrence J. Hogan, Jr. announced that TCA recipients would receive an additional $100 per month from January through June 2021. The RELIEF Act extended the additional benefit to TDAP recipients, who began receiving the benefit in February 2021. Supplemental Budget No. 5 of the fiscal 2022 operating budget provided funding through the federal American Rescue Plan Act (ARPA) to continue the additional benefit through December 2021. Under the ARPA, DHS received approximately $17.8 million from a new TANF

Pandemic Emergency Fund. Use of these funds are limited to nonrecurrent, short-term benefits (no more than four months). DHS is planning to use most of the funding ($11.6 million) to provide a phase-down of the additional $100 benefit for TCA recipients. (Funds cannot be used for TDAP recipients). The additional benefit will be reduced by $20 per month from January through April 2022, until there is no additional benefit in May 2022.

Other Benefit Changes

Under current law, beginning in fiscal 2023, TCA benefits plus SNAP benefits must equal 61.25% of the Maryland Minimum Living Level (MMLL), which is an increase from 61.0% in prior years. MMLL is updated annually for inflation. Although the required combined benefit level must increase slightly compared to the prior year, TCA benefits are not projected to increase in either fiscal 2022 or 2023. The U.S. Department of Agriculture (USDA) announced changes to the SNAP benefit that resulted in a 25% increase in federal fiscal 2022. The calculation of MMLL resulted in only a 5% increase due to inflation compared to a significantly higher SNAP increase, and no increase for TCA was required for federal fiscal 2022. Based on historic inflation levels, DLS does not project that an increase in TCA benefit levels would be required under the MMLL calculation until fiscal 2027 due to the increase in SNAP benefits.

Chapter 408 of 2018 established a plan for increasing the TDAP maximum benefit to the level of the maximum allowable payment for a one-person household in TCA by fiscal 2027. Beginning in fiscal 2021, the maximum benefit is a percentage of the maximum TCA benefit for a one-person household (74%); this increases four percentage points annually until fiscal 2026 (94%) and then to 100% in fiscal 2027 and thereafter. Although TCA benefits are not projected to rise in fiscal 2022 or 2023, the TDAP benefit increased from $243 in fiscal 2021 to $256 in fiscal 2022 under Chapter 408. In fiscal 2023, DLS projects that the benefit will increase to $269 to reflect 82% of the TCA benefit.

Among the changes made by USDA to SNAP, the minimum benefit was increased to $20, which reduces the maximum State benefit under the Supplemental SNAP benefit for Seniors program to $10 when the program resumes operations. For further discussion of SNAP, see "Supplemental Nutrition Assistance Program" within the Human Services section of this *Issue Papers of the 2022 Session*.

For further information contact: Tonya.Zimmerman@mlis.state.md.us

Human Services

Supplemental Nutrition Assistance Program

Supplemental Nutrition Assistance Program (SNAP) enrollment increased at unprecedented rates during the COVID-19 pandemic. High enrollment is expected to continue through the end of calendar 2021. Recent State legislative efforts have enhanced SNAP benefits in Maryland. Federal actions have also significantly increased average benefits per case, allowed for the issuance of additional benefits for eligible school children, and increased the purchasing power of benefits.

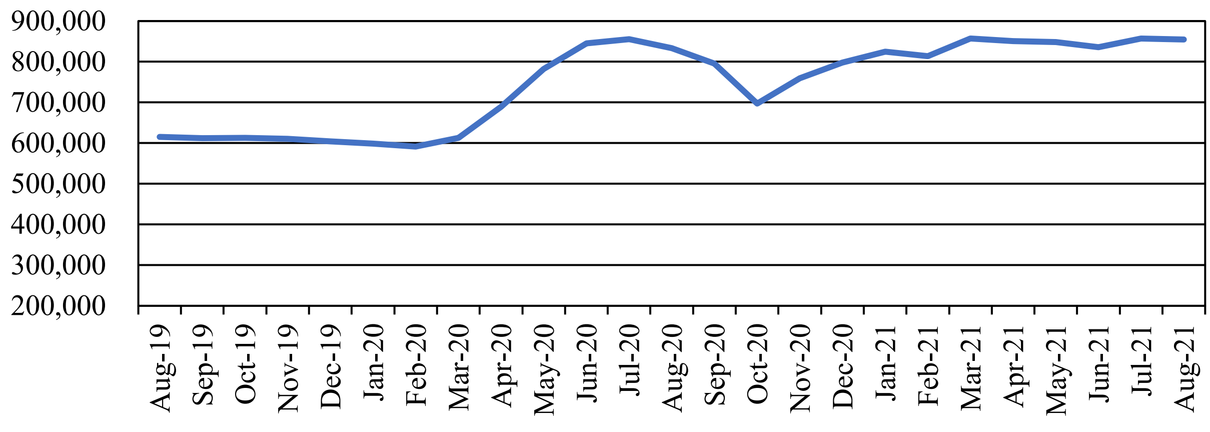
Supplemental Nutrition Assistance Program

The Supplemental Nutrition Assistance Program (SNAP) is a 100% federally funded benefit that helps low-income households purchase food. Program rules and requirements are issued by the federal government, while administrative costs are split equally between the State and federal government. Participants must meet income and resource requirements. The number of SNAP recipients increased at unprecedented rates during the COVID-19 pandemic. As shown in **Exhibit 1**, enrollment reached 855,224 in July 2020 (the highest enrollment to date at that time), which is nearly 40% higher than the number of recipients in March 2020.

Exhibit 1

Supplemental Nutrition Assistance Program Recipients

August 2019 to August 2021



Source: Department of Human Services; Department of Legislative Services

Enrollment fell briefly in fall 2020 due to temporary reinstatement of recertification requirements. By March 2021, the number of recipients reached another record high of 857,165, which is a 5.3% increase from February 2021. As of August 2021, the number of recipients remained high (854,592). High enrollment levels are expected to continue at least through the end of calendar 2021 as recertifications remain on hold. Additional information on caseload trends can be found in "Public Assistance Caseloads" of this section of the *Issue Papers of the 2022 Session*.

Maryland Legislative Enhancements

The following recent legislative efforts have enhanced SNAP in Maryland, including State and locally supported supplemental benefits:

- ***State Supplemental Benefit*:** Chapter 696 of 2016 established a supplemental benefit for households with a member who is at least 62 years old to ensure that these households receive at least $30 per month.

- ***Restaurant Meals Program*:** Chapter 475 of 2019 allowed individuals who do not have a place to store and cook food, may not be able to prepare food, or do not have access to a grocery store to use SNAP benefits for prepared meals.

- ***Summer SNAP*:** Chapters 635 and 636 of 2019 established a Summer SNAP program under which some households with school-aged children in select jurisdictions receive an additional $30 per child in the months of June, July, and August, and $10 in December. Summer SNAP is supported through State and local funds based on the Public School Construction contribution rate.

- ***Heat and Eat Program*:** Chapters 362 and 363 of 2021 require the Department of Human Services to apply a standard utility allowance to the shelter deduction used to determine countable gross income for SNAP eligibility, thereby increasing access to SNAP benefits.

Federal Emergency Allotments

The federal Families First Coronavirus Response Act of 2020 (FFCRA) authorized an increase in SNAP benefits to the maximum allowable level for a household size (known as emergency allotments). This action significantly increased average benefits per case in Maryland. The availability of emergency allotments effectively suspended the State supplemental SNAP benefit as no households received less than $30 per month. Maryland has been approved for emergency allotments through November 2021, with additional extensions approved on a month-to-month basis.

Federal Pandemic Electronic Benefit Program

The FFCRA also authorized a Pandemic Electronic Benefit Transfer Program (P-EBT) that allowed for the issuance of a SNAP benefit equivalent to daily reimbursement for a free breakfast and lunch. The benefit is available to children eligible for free or reduced-price school meals for days on which schools were closed due to the COVID-19 pandemic. Maryland issued benefits of $370.50 per child for the 2019-2020 school year with benefits in excess of $167 million provided to more than 450,000 children.

The federal Continuing Appropriations Act, 2021 and Other Extensions Act and the federal American Rescue Plan Act extended and expanded authorization for P-EBT. The program was extended through the 2021 summer term and expanded to include some children younger than age six. Maryland was approved to provide P-EBT for the 2020-2021 school year in April 2021 and the summer benefit in July 2021 but paid retroactive benefits prior to federal approval. Maryland estimated it would provide approximately $726.9 million for school year P-EBT and $207 million for summer P-EBT under these extensions. The final numbers of recipients and benefits paid will be available after the completion of payment of the retroactive benefits.

Federal Updates to the Thrifty Food Plan

In June 2021, the U.S. Department of Agriculture (USDA) determined that 88% of SNAP participants reported facing barriers to consuming a healthy diet, and 61% reported that the most common barrier was the affordability of necessary foods. In response, USDA released an updated Thrifty Food Plan (a plan used to determine the maximum allotment of SNAP benefits) for federal fiscal 2022. The new Thrifty Food Plan includes a cost adjustment to increase the plan's purchasing power for the first time in 45 years. The cost adjustment reflects notable shifts in the food market and consumers' circumstances using four key factors: current food prices; what consumers typically eat; updated dietary guidance; and nutrients in available food items. This action increased maximum SNAP allotments by more than 20%.

In Maryland, the cost adjustment is projected to increase total SNAP benefits by approximately $349 million. The new maximum allotments began on October 1, 2021. The maximum allotment for a family of three is $658 per month. By comparison, the original maximum allotment for the year beginning October 1, 2020, was $535 (an amount temporarily increased to $616 from January 1, 2021, through September 30, 2021).

For further information contact: Amberly.Holcomb@mlis.state.md.us

Transportation

Overview of Draft *Consolidated Transportation Program*

The Maryland Department of Transportation's draft 2022–2027 *Consolidated Transportation Program* (CTP) lists all capital projects funded in the current fiscal year and those planned over the next five years. Spending over the six-year period of the draft 2022-2027 CTP totals $16.4 billion, a $1.2 billion increase from the 2021-2026 CTP.

Overview

The *Consolidated Transportation Program* (CTP) is Maryland's six-year capital budget for transportation projects. It is updated annually and includes all major and minor capital projects that the Maryland Department of Transportation (MDOT), its modal administrations, and the Washington Metropolitan Area Transit Authority are undertaking in the current year and over the next five-year planning period. The CTP also includes mandated State aid to local governments. Capital projects for the Maryland Transportation Authority are also included in the CTP but are excluded from this analysis. **Exhibit 1** compares six-year spending contained in the 2021-2026 CTP to the draft 2022-2027 CTP by fund source.

Exhibit 1
Comparison of Six-year Capital Spending by Fund Source
Fiscal 2021-2027
($ in Millions)

	2021-2026 CTP	Draft 2022-2027 CTP	Change	% Change
Special Funds				
Taxes, Fees, and Other	$3,087.0	$4,787.0	$1,700.0	55.1%
Bond Proceeds/Premiums	1,900.0	1,605.0	-295.0	-15.5%
Subtotal – Special Funds	**$4,987.0**	**$6,392.0**	**$1,405.0**	**28.2%**
Federal Funds	6,131.0	6,110.1	-20.9	-0.3%
Other Funds[1]	1,627.2	1,405.0	-222.2	-13.7%
General/Other State Funds	1,014.5	1,084.5	70.0	6.9%
Subtotal – State Program	**$13,759.7**	**$14,991.6**	**$1,231.9**	**9.0%**
State Aid Special Funds	1,417.1	1,403	-14.1	-1.0%
Total	**$15,176.8**	**$16,394.6**	**$1,217.8**	**8.0%**

CTP: *Consolidated Transportation Program*

[1] Includes funds from customer and passenger facility charges and certain types of federal aid that do not pass through the Transportation Trust Fund.

Note: Numbers may not sum to total due to rounding.

Source: Maryland Department of Transportation 2021-2026 CTP, draft 2022-2027 CTP; Department of Legislative Services

Total spending in the draft CTP increases by $1.2 billion (8.0%) compared with the 2021-2026 CTP. Special funds, including bond proceeds, increase by just over $1.4 billion (28.2%) for the State capital program and by just under $1.4 billion when State transportation aid is included. Other funds, which do not flow through the State budget, decrease by $222.2 million (-13.7%) compared to the prior CTP.

Exhibit 2 compares MDOT's total capital spending in each plan by mode and for State aid to local governments. Programmed spending increases for every mode but the Motor Vehicle Administration and decreases for State Aid, reflecting an additional year of aid funding at the base rate following four years of enhanced funding that ends after fiscal 2024.

Exhibit 2
Comparison of Six-year Capital Spending by Mode
Fiscal 2021-2027
($ in Millions)

	2021-2026 CTP	Draft 2022-2027 CTP	Change	% Change
Secretary's Office	$108.1	$135.4	$27.3	25.3%
WMATA	2,704.6	2,712.6	8.0	0.3%
State Highways	5,786.3	5,909.3	123.0	2.1%
Port	1,059.3	1,145.9	86.6	8.2%
Motor Vehicle	115.2	112.7	-2.5	-2.2%
Mass Transit	3,132.0	4,090.6	958.6	30.6%
Airport	854.2	885.1	30.9	3.6%
Subtotal	**$13,759.7**	**$14,991.6**	**$1,231.9**	**9.0%**
State Aid	1,417.1	1,403.0	-14.1	-1%
Total	**$15,176.8**	**$16,394.6**	**$1,217.8**	**8.0%**

CTP: *Consolidated Transportation Program*
WMATA: Washington Metropolitan Area Transit Authority

Note: Numbers may not sum to total due to rounding.

Source: Maryland Department of Transportation 2021-2026 CTP, draft 2022-2027 CTP; Department of Legislative Services

Exhibit 3 compares MDOT's six-year capital spending in each plan by category. Programmed spending for the Development and Evaluation Program shows the biggest increase on a percent basis with an increase of 221.1%. Spending under this program is used for the evaluation and preliminary planning for projects that will then be added to the construction program in the future.

Exhibit 3
Comparison of Six-year Capital Spending by Category
Fiscal 2021-2027
($ in Millions)

	2021-2026 CTP	Draft 2022-2027 CTP	Change	% Change
Major Projects	$7,564.7	$8,372.9	$808.2	10.7%
System Preservation/Minor Projects	5,908.2	6,066.7	158.5	2.7%
Development and Evaluation Program	118.3	379.9	261.6	221.1%
Local Transportation Aid	1,417.1	1,403.0	-14.1	-1%
Other	168.5	172.3	3.8	2.3%
Total	**$15,176.8**	**$16,394.8**	**$1,218.0**	**8.0%**

CTP: *Consolidated Transportation Program*

Note: Numbers may not sum to total due to rounding.

Source: Maryland Department of Transportation 2021-2026 CTP, draft 2022-2027 CTP; Department of Legislative Services

For further information contact: Steve.McCulloch@mlis.state.md.us

Transportation

Status of Recent Transportation Initiatives

Over the past few years, several high-profile transportation initiatives intended to address traffic congestion, freight, high-speed transit, and mass transit have been proposed in the State. This paper provides a brief status update on a number of initiatives.

Chesapeake Bay Bridge Third Crossing

Background

Over the past several years, the Maryland Transportation Authority (MDTA) has conducted several studies on issues affecting the Chesapeake Bay Bridge, including transportation and safety needs, current and future maintenance requirements and costs, and traffic capacity and means to alleviate congestion. Most recently, MDTA initiated a formal process under the National Environmental Policy Act (NEPA) to begin consideration of options for the addition of a third Bay Bridge crossing.

Status

The Chesapeake Bay Crossing Study: Tier 1 NEPA (Bay Crossing Study) Draft Environmental Impact Statement (EIS) was published on February 23, 2021, with public comments accepted through May 17, 2021. The Bay Crossing Study evaluated multiple corridor alternatives based on specified criteria as well as environmental and financial considerations. MDTA selected Corridor 7/Existing Corridor (US 50/301 to US 50 between Crofton and Queenstown) as the preferred alternative. The Tier 1 NEPA Final EIS is expected to be published in winter 2021/2022.

I-495 and I-270 P3 Managed Lanes

Background

In September 2017, Governor Lawrence J. Hogan. Jr. announced a Traffic Relief Plan comprising of four components: the I-495 and I-270 Public-private Partnership (P3) Program; the MD 295 Managed Lanes; the Baltimore Area Traffic Relief Plan; and the statewide Smart Traffic Signals project (the Maryland Department of Transportation (MDOT) has since consolidated the MD 295 Managed Lanes component with the Baltimore Area Traffic Relief Plan). As envisioned by the State Highway Administration, the I-495 and I-270 P3 Program would reduce traffic congestion by adding two dynamic tolling lanes in each direction to the Maryland portion of the Washington Beltway (I-495) and to I-270 from the Washington Beltway to Frederick. As proposed, this $7.6 billion project would be paid for entirely from toll revenue generated by the project and would be constructed and operated by one or more concessionaires chosen through P3 procurements.

Status

The I-495 and I-270 P3 Program has been rebranded as Op Lanes Maryland. In August 2021, the Board of Public Works (BPW) approved the Phase 1 Developer P3 agreement between MDOT/MDTA and Accelerate Maryland Partners, Inc (AMP). Under this agreement, AMP will complete the predevelopment work for Phase 1 comprising I-495 from the vicinity of the George Washington Memorial Parkway (GW Parkway) in Virginia, across and including the American Legion Bridge, to its interchange with I-270, and I-270 from its interchange with I-495 to its interchange with I-70. Phase 1 is expected to be constructed in at least two phases with the first phase, Phase 1 South, comprising the segment from the GW Parkway to the I-70/I-395 interchange. Additional P3 procurements will be used to select section developers to design, build, operate, maintain, and finance each section. The Managed Lanes Study Supplemental Draft EIS was published on October 1, 2021, with public comments accepted through November 15, 2021. The Final EIS and Record of Decision is expected in spring 2022. Project information can be found at: https://oplanesmd.com.

Howard Street Tunnel Reconstruction

Background

The inability to run high-cube double-stack railroad traffic through the Howard Street Tunnel (HST) has been a long-standing issue for the Maryland Port Administration (MPA). Completed in 1895, the existing single-track freight tunnel, as well as numerous clearances along the rail alignment, are approximately 18 inches too short to allow modern double-stack intermodal trains to travel between the Port of Baltimore and Philadelphia, Pennsylvania. In 2015, MDOT began working with CSX, which owns and operates the rail line and tunnel, to develop a cost-effective solution to modify HST to allow double stacking.

Status

The Environmental Assessment (EA) for the HST project concluded on June 17, 2021, with the Federal Railroad Administration (FRA) signing a Finding of No Significant Impact. Construction is expected to begin in fiscal 2022 with funding for the project, estimated at $466 million, from the following sources:

- federal Infrastructure for Rebuilding America grant ($125 million);

- State of Maryland ($202.5 million);
- CSX ($113 million);
- Pennsylvania Department of Transportation (for bridges within Pennsylvania) ($22.5 million); and
- Baltimore City federal formula funding ($3 million).

Loop and Hyperloop

Background

The Boring Company proposed constructing parallel twin tunnels between Washington, DC and Baltimore City, largely under the Baltimore-Washington Parkway, in a project referred to as the DC-to-Baltimore Loop. As envisioned, the loop would be a high-speed underground transportation system that would transport passengers in autonomous electric vehicles carrying between 8 and 16 riders and traveling at 125 to 150 miles per hour. The loop would also be designed to provide for potential future expansion and conversion to hyperloop, which would draw a vacuum inside the tube to eliminate air friction and allow for speeds of over 600 miles per hour.

Status

MDOT, as the State agency sponsor for the project, has submitted an EA for review to the Federal Highway Administration and FRA. According to the federal Permitting Dashboard, the EA is still in progress despite an estimated completion date of summer 2019. Other permits required for the project are listed as “paused.” The project appears to have been abandoned by The Boring Company as evidenced by the removal of information related to the project from its website. Copies of the EA, as well as a draft Programmatic Agreement to satisfy requirements under the National Historic Preservation Act, are available at: https://www.dcbaltimoreloop.com/.

Maglev

Background

The Baltimore-Washington Superconducting Maglev (SCMAGLEV) Project is a proposal by the Baltimore Washington Rapid Rail (BWRR) company (a subsidiary of the Northeast Maglev company) to construct a high-speed rail line utilizing SCMAGLEV technology between Baltimore City and Washington, DC. This is the first segment in a long-range plan by Northeast Maglev to develop SCMAGLEV service between Washington, DC and New York City.

In 2015, MDOT, as the State agency sponsor for the project, secured a $27.8 million grant from the U.S. Department of Transportation to conduct planning activities for the SCMAGLEV project. BWRR is providing the required 20% match toward the federal grant.

Status

In January 2021, the Draft EIS and Draft Section 4(f) Evaluation was published. A 90-day comment period for the Draft EIS was held from January 22, 2021, through April 22, 2021. In August 2021, BWRR's legal efforts to use eminent domain to condemn 43 acres of undeveloped land in Baltimore City for maglev train operations were dismissed. On August 25, 2021, FRA paused the EIS to review project elements and determine next steps. Additional information on the project can be found at: http://bwmaglev.info/.

Purple Line Light Rail

Background

The Purple Line light rail project is a 16.2-mile light rail line that will extend from Bethesda in Montgomery County to New Carrollton in Prince George's County, with a total of 21 stations. It will provide a direct connection to the Metrorail Red, Green, and Orange lines at Bethesda, Silver Spring, College Park, and New Carrollton. The Purple Line will also connect to the MARC train service, Amtrak, and regional and local bus services.

Status

In June 2020, Purple Line Transit Partners (PLTP), the P3 concessionaire for the project, notified MDOT of its intent to terminate the P3 for extended delay, and court actions were filed by both parties. The court ruled that PLTP had the right to leave the project, and in September 2020, MDOT assumed management of the project while working with PLTP to resolve the issues that led to the notice to terminate. MDOT subsequently reached a $250 million settlement with PLTP to continue the project. In December 2020, BPW approved the settlement, with the first $100 million to be paid by December 31, 2020. The design-build contractor was removed from the project as part of the settlement, and the process to select a replacement design-build contractor began. PLTP shortlisted three firms in July 2021, and the new design-build contractor is expected to be selected by the end of the year, with financial closure on the new project agreement expected by mid-February 2022. Project information can be found at: http://purplelinemd.com.

Transportation

Federal Infrastructure Investment and Jobs Act

The federal Infrastructure Investment and Jobs Act provides $1.2 trillion over eight years for major investments in American infrastructure. Under the Act, the State will receive approximately $6.4 billion over five years for transportation-related infrastructure investments, including investments in roads and bridges, public transportation, electric vehicle infrastructure, and airport infrastructure.

Overview and Status

The Infrastructure Investment and Jobs Act was introduced in the U.S. House of Representatives on June 4, 2021, to provide funding for an array of infrastructure investments, including investments in roads and bridges, public transit, airports, and electric vehicle infrastructure. On November 5, 2021, the U.S. Congress passed an amended version of the Act and presented to the bill for President Joseph R. Biden. Jr.'s signature on November 8, 2021.

Many of the transportation-related investments included in the Infrastructure Investment and Jobs Act are designed to reduce greenhouse gas emissions and build resilience to climate change. For additional information on how the bill will impact climate change efforts, see "Climate Change Mitigation and Adaptation" within the Environment and Natural Resources section of this *Issue Papers of the 2022 Session*.

Funding for Maryland

The State will receive significant funding for various infrastructure projects under the bill. Below is a brief summary of major transportation-related investments.

Roads and Bridges

Maryland will receive $4.1 billion for federal-aid highway apportioned programs. This funding can be used to repair and resurface roads, deliver key safety and mobility projects, and provide transportation system management and operations technology projects.

The State is also eligible to receive $409 million over five years specifically for bridge replacement, rehabilitation, preservation, protection, and construction. Additionally, the State has the ability to compete for a portion of the $12.5 billion available for economically significant bridges under the Bridge Investment Program.

The State can also compete for additional funding under the $1 billion Reconnecting Communities Pilot Program. This program provides competitive grants for planning and projects to remove, retrofit, or mitigate existing highways that were built through neighborhoods and created a barrier to mobility and economic development.

Public Transportation

Under the bill, $1.7 billion will be provided to Maryland over five years to improve public transportation options across the State, including making repairs and upgrades to aging infrastructure, modernizing bus and rail fleets, and making stations more accessible. The bill will invest $66 billion in railroads, including $22 billion for the Northeast Corridor, which includes Maryland's Amtrak and MARC service. The bill provides $150 million annually to the Washington Metropolitan Area Transit Authority through 2030. The bill also includes language to ensure consideration of projects previously approved by the Federal Transit Administration's Capital Investment Grants Program, such as the Red Line light rail project in Baltimore City. Lastly, the bill makes available an additional $5.75 billion nationwide for replacing transit vehicles with zero emission vehicles.

Electric Vehicle Infrastructure

The State will receive $63 million over five years to support the expansion of an electric vehicle charging network as part of a proposed National Electric Vehicle Formula Program. This program would provide states with funding for the acquisition, installation, operation, and maintenance of electric vehicle charging infrastructure. In addition to this $63 million, Maryland will have the opportunity to apply for a portion of the $2.5 billion in grant funding dedicated to electric vehicle charging infrastructure.

Airport Infrastructure

The bill includes $158 million over five years for infrastructure development of airports in the State. This funding could be used to improve the State's airport facilities, including improving runways and taxiways, implementing terminal development projects, and constructing new airport traffic control towers.

Business Regulation

Public Service Commission Initiatives and Renewable Energy

The COVID-19 pandemic led to moratoriums on utility service terminations and increased need for energy assistance. Recent gas explosions have renewed interest in pipeline safety, including an existing program to fund the identification and replacement of vulnerable and deficient gas distribution pipes. Changes to the State's renewable energy portfolio standard altered the carve-out requirements for solar projects and the types of energy that may be included in Tier 1. Potential federal action on renewable energy and climate change may further alter the State's energy landscape.

Public Utility Arrearages and State Energy Assistance Programs

One of the major economic impacts of the COVID-19 pandemic was a significant increase in demand for financial assistance to low-income households for electricity and gas service. During summer 2020, many customers accumulated significant arrearages for utility services, lacking income to pay for the services, but needing to use them to support household activities such as working from home and remote learning. First by executive order and then by order of the Public Service Commission (PSC), utility services were subject to moratoriums on service terminations and late fees for nonpayment. The State moratoriums on utility service terminations expired on October 1, 2020, with electric and gas utilities authorized to begin terminations as of November 15, 2020. PSC conducted proceedings to require electric and gas utilities to allow customers to enter into extended payment plans of one year for most accounts and two years for households receiving certain public assistance. Although governmental agencies and public service companies encouraged affected households to seek help before terminations took effect, many households were still left facing termination of electric or gas services.

In the months ahead, residual customer arrearages that accrued throughout the pandemic, along with heightened global energy prices, may continue to put pressure on existing utility assistance programs. The Office of Home Energy Programs (OHEP) in the Department of Human Services (DHS) administers energy assistance programs, including the Electric Universal Services Program (EUSP) and the Maryland Energy Assistance Program (MEAP), which assist households with specified incomes to afford energy bills and minimize crises. EUSP, funded primarily with State sources, provides bill payment and arrearage assistance to electric customers. MEAP, funded through the federal Low-Income Home Energy Assistance Program, provides bill payment assistance for a variety of heating fuels and natural gas arrearage assistance. Arrearage assistance is generally only available to households once every seven years, but Chapter 639 of 2021 reduced that restriction to once every five years for certain individuals. Chapter 639 also expanded eligibility under EUSP – which is otherwise set at 175.0% of the federal poverty level (FPL) – for residential customers age 67 or older who are at or below 200.0% of FPL, or for residential customers who meet a broader designation approved by PSC.

In addition to the energy assistance programs administered by the State, utilities provide various forms of arrearage assistance. The RELIEF Act, Chapter 39 of 2021, allocated \$83.0 million in fiscal 2021 to PSC for distribution directly to utility companies to reduce utility arrearages. In addition, under Chapter 639, utilities must adopt limited-income mechanisms, subject to the approval of PSC, that will assist limited-income customers to afford utility service. The mechanisms may take the form of a program, tariff provision, credit, rate, rider, or other means.

Natural Gas Infrastructure – Incidents and Replacement

Safety oversight of natural gas facilities in Maryland is divided between the federal government and the State. Transmission facilities such as gas pipelines are under the jurisdiction of the Pipeline and Hazardous Materials Safety Administration (PHMSA) of the U.S. Department of Transportation. PHMSA has delegated enforcement of federal pipeline safety regulations to PSC. PSC has original jurisdiction over distribution infrastructure as well as gas operators in the State. Inspection and maintenance activities are included in State regulations which also incorporate by reference relevant federal regulations.

Gas explosions across the State in recent years have drawn renewed attention to the Maryland Strategic Infrastructure Development and Enhancement program (STRIDE). STRIDE was established in 2013 to identify vulnerable and deficient gas distribution pipes and replace them on an accelerated schedule. Traditional rate regulation would only allow a gas company to replace distribution facilities such as piping and valves as needed, and then subsequently seek reimbursement for the prudently incurred costs in a rate case. STRIDE allows the utility to create a plan to schedule distribution equipment upgrades, obtaining prospective cost recovery through a surcharge on customer bills and facilitating financing of the replacement activities at more favorable rates. Currently, the fixed annual surcharge may not exceed \$2 per month for each residential natural gas customer; fixed annual surcharges for nonresidential customers are also capped.

In the first phase of STRIDE filings, from 2014 to 2018, approximately 290 miles of gas mains were approved for replacement by BGE, Columbia Gas, and Washington Gas at a total cost of over \$800.0 million. In the ongoing second phase of filings, 2019 to 2023, PSC has already approved replacement of 400 miles of gas mains at an anticipated total cost of \$1.2 billion. The costs are subject to annual PSC review.

By the end of 2020, BGE had replaced approximately 300 miles of cast iron and bare steel pipeline, and 1,050 miles remained to be replaced. The average pace of BGE’s replacement work is about 50 miles per year at an average cost of around \$2.5 million per mile. BGE has anticipated completing mains and other infrastructure replacements through STRIDE by 2040 at a cost of approximately \$2.7 billion. Washington Gas uses STRIDE for replacement of service connections as well as pipelines. The company had replaced approximately 110 miles of mains by the end of 2020 and had approximately 550 miles of mains to be replaced in coming years. Washington Gas has anticipated completing its STRIDE service connection replacements by 2025 and its pipeline replacement work by 2035. In the first seven years of STRIDE projects, the company spent approximately $345.0 million.

Additionally, after a 2016 explosion at the Flower Branch apartment building in Silver Spring that was likely caused by the failure of an indoor gas service regulator, Chapter 264 of 2021 required certain gas service regulators to be installed or relocated outside of specified structures. By January 1, 2022, each gas company must file a plan with PSC to relocate gas service regulators in multifamily residential structures. After considering specified information, PSC must issue a final order approving or disapproving each plan by January 1, 2023. If PSC issues an order disapproving a plan, the gas company must submit a new plan within 60 days. Until the plans are fully implemented, gas companies must update PSC annually on the progress made in the previous year, and PSC must in turn report that information to the Governor and the General Assembly.

Renewable Energy Portfolio Standard

Maryland's renewable energy portfolio standard (RPS) was enacted in 2004 to facilitate a gradual transition to renewable sources of energy. Electric companies and other electricity suppliers must submit renewable energy credits (REC) equal to a percentage specified in statute each year or else pay an alternative compliance payment (ACP) equivalent to their shortfall. Chapter 757 of 2019 increased RPS from 25.0% by 2020 to 50.0% by 2030.

The 2021 legislative session saw several adjustments to RPS requirements. The Tier 1 requirements include a carve-out for solar, which had been set to reach 14.5% by 2028, but was adjusted to address supply chain and labor concerns. Chapter 673 of 2021 reduced the amount of solar energy required each year from 2022 through 2029, before realigning with the 14.5% target in 2030. In turn, ACPs increase for not meeting these lower solar energy thresholds, beginning in 2023, before returning in 2030 to near parity with the penalty levels previously set under the 2019 law. In addition, Chapter 673 of 2021 removed "black liquor", a form of paper mill residue, and any product derived from black liquor from eligibility for inclusion in the RPS as a Tier 1 resource. The exclusion applies to all RPS compliance years beginning January 1, 2022. The Act further extended the inclusion of large hydropower facilities as Tier 2 resources in perpetuity at 2.5%. Separately, Chapter 164 of 2021 established a carve-out in Tier 1 for geothermal systems, beginning at 0.05% in 2023 and reaching 1.0% in 2028, subject to specified requirements. Chapter 691 of 2021 added wastewater thermal systems to Tier 1, without creating a carve-out.

Under the 2019 enhancements to RPS, Maryland must solicit new offshore wind capacity beginning with at least 400 megawatts in 2026, increasing to at least a cumulative 800 megawatts in 2028 and at least a cumulative 1,200 megawatts in 2030. By the end of 2021, PSC is expected to issue a decision regarding the proposed offshore wind projects that may serve to meet these goals. In connection with already approved offshore projects, an Eastern Shore steel fabricator has partnered with a developer to supply over $70.0 million in wind turbine foundations for a planned project off Ocean City, and another wind developer has announced plans to build a steel plant to manufacture offshore wind farm components and a logistics hub at the former site of Bethlehem Steel in Baltimore County.

Potential Federal Action on Renewable Energy

The Biden Administration has announced goals of reaching 80.0% carbon emission-free electricity by 2030 and 100.0% by 2035 – including by generating 45.0% of the nation's electricity from solar by 2050 and developing 30,000 megawatts of offshore wind by 2030. In October 2021, the U.S. Department of the Interior announced a plan to develop large-scale offshore wind projects along most of the nation's coastline, including the Mid-Atlantic states, with the hope of issuing leases in federal waters by 2025. This announcement follows the approval of the nation's first major commercial offshore wind project off Martha's Vineyard in Massachusetts, a proposed sale of offshore leases between New Jersey and New York, and the start of review for a dozen other leasing sites off the East Coast.

Federal Energy Regulatory Commission Order

Since 2006, PJM Interconnection (PJM), the regional transmission operator that serves Maryland and several other surrounding states, has had in place a capacity market minimum offer price rule (MOPR) designed to prevent generators from artificially suppressing prices when participating in the capacity auction by unfairly shutting out competitors through underbidding. Recent years saw contention over a Federal Energy Regulatory Commission (FERC) order, issued in December 2019, that would have expanded PJM's MOPR to, among other entities, all new renewable energy sources that receive state subsidies. Under this order, newly covered generators would have been subject to a price set by PJM when participating in a capacity auction, rather than the price the generator may have otherwise been able to "bid in" to the auction based on costs minus subsidies received, *etc.* The effect of the expanded MOPR would have been to raise the auction offer price for renewable generators that receive state subsidies, thereby making it harder for those energy sources to "clear" the PJM market.

The expanded MOPR met vocal criticism from states such as Maryland that have renewable energy goals. The order effectively targeted and impaired renewable energy programs that are subsidized by states to meet their legislative mandates, such as Maryland's RPS. The expanded MOPR was also expected to raise costs for electricity customers. States even threatened to pull out of PJM's capacity market altogether as a result of the expanded MOPR.

In response to these concerns, PJM submitted a revised proposal to FERC that exempts renewable energy facilities, nuclear power plants, demand response and energy efficiency programs, and new natural gas-fired power plants from the MOPR. This narrower proposal, which allows entities to file a complaint with FERC if they believe a state-supported facility should be subject to higher auction bids, was supported by PJM's member states as friendlier to renewable energy. FERC's four commissioners split 2-2 on whether to approve the proposal, which allowed it to take effect in September 2021. Although this new and narrower MOPR is now in effect, a trade group that supported the expanded MOPR and opposes the new narrower rule may seek a rehearing before FERC and potentially seek judicial review at the U.S. Court of Appeals for the District of Columbia Circuit.

For further information contact: Tyler.Allard@mlis.state.md.us or Nathan.McCurdy@mlis.state.md.us

Business Regulation

Status of Rental Relief Programs

Through multiple federal actions, Maryland is slated to receive a total of $753.8 million for distribution to Marylanders who need rental assistance due to financial hardship from the COVID-19 pandemic. The first round of federal assistance has been allocated to the State and local jurisdictions, but work continues to distribute all of the funds to the renters themselves. The Department of Housing and Community Development fell short of the federal requirement to have expended 30% of funds by September 30, 2021. Minimal funds from the second round of federal assistance have been distributed to renters.

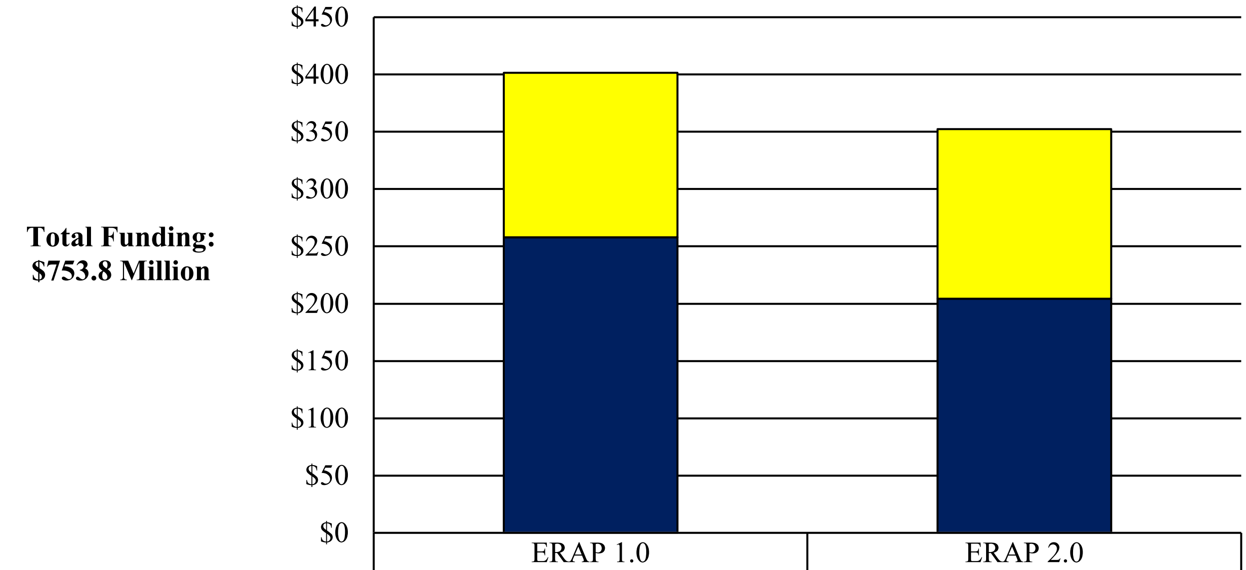
Emergency Rental Assistance Program

The COVID-19 pandemic has exacerbated housing insecurity in the nation due to high levels and extended periods of unemployment, and many renters fell behind on rent payments. In response, Congress created the Emergency Rental Assistance Program (ERAP 1.0) in December 2020 and added a second round of funding (ERAP 2.0) through the American Rescue Plan Act in March 2021. ERAP funds can be used to provide rental or utility arrears assistance of up to 12 months, as well as 3 months of prospective assistance, to renters who have experienced financial hardship due to COVID-19 and who have household incomes at or below 80% of the area median income. ERAP 2.0 provides additional funding for, and the maximum duration of, such assistance; however, total assistance between both programs may not exceed 18 months.

Funding Overview

The U.S. Treasury allocated funding based on population to the Department of Housing and Community Development (DHCD) as well as directly to the eight largest local jurisdictions in Maryland. As shown in **Exhibit 1**, Maryland's ERAP funding totals $753.8 million, including $401.6 million from ERAP 1.0 and $352.2 million from ERAP 2.0. DHCD and the local jurisdictions have until September 30, 2022, to expend ERAP 1.0 funds and until September 30, 2025, to expend ERAP 2.0 funds.

Exhibit 1
Emergency Rental Assistance Program Funding
($ in Millions)



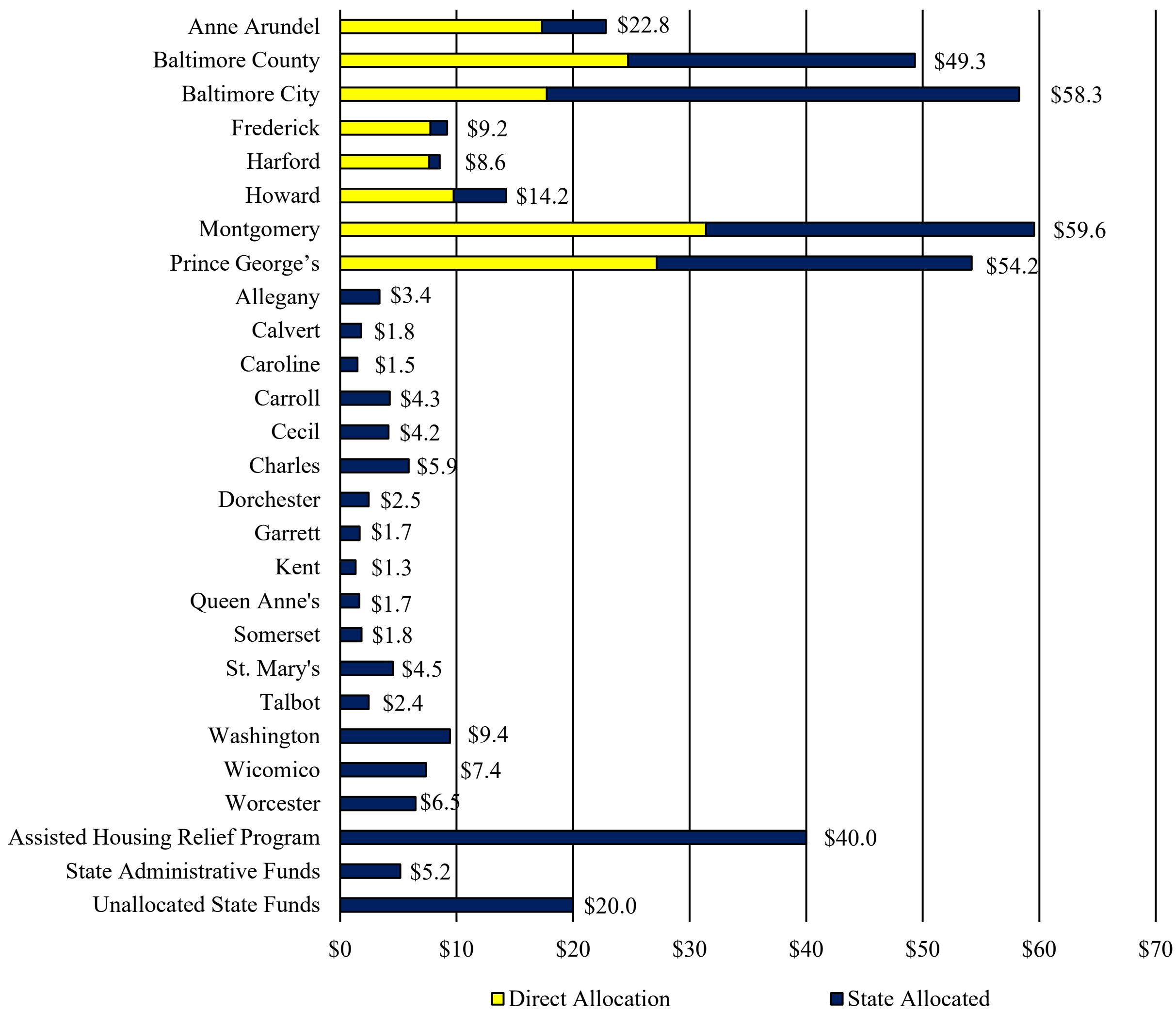
	ERAP 1.0	ERAP 2.0
Maryland Total	$401.6	$352.2
Direct to Local Jurisdictions	$143.5	$148.0
DHCD Funding	$258.1	$204.2

DHCD: Department of Housing and Community Development
ERAP: Emergency Rental Assistance Program

Source: U.S. Treasury

DHCD elected to distribute the majority of ERAP 1.0 State-allocated funds to local jurisdictions, using a formula based on the number of renters at risk of eviction. DHCD retained $5.2 million for program administration and outreach activities, $20.0 million as a reserve to allocate in the future as needed, and $40.0 million for the Assisted Housing Relief Program, through which DHCD provides rental assistance to tenants in multi-family properties that have previously received DHCD financing. **Exhibit 2** shows all ERAP 1.0 funding by jurisdiction, including both State-allocated funds and funds received directly from the U.S. Treasury. Some jurisdictions (Baltimore City and Baltimore, Howard, and Harford counties) allotted some or all of their State-directed ERAP 1.0 allocations to the United Way of Central Maryland Strategic Targeted Eviction Prevention (STEP) Program, totaling $32.6 million. The STEP Program works with landlords in those jurisdictions to collectively provide assistance for multiple tenants. DHCD has not yet allocated its ERAP 2.0 funding. Only Prince George's County has begun to expend ERAP 2.0 funds, totaling $0.4 million as of September 30, 2021.

Exhibit 2
ERAP 1.0 Funding by Jurisdiction
($ in Millions)



ERAP: Emergency Rental Assistance Program

Source: Department of Housing and Community Development

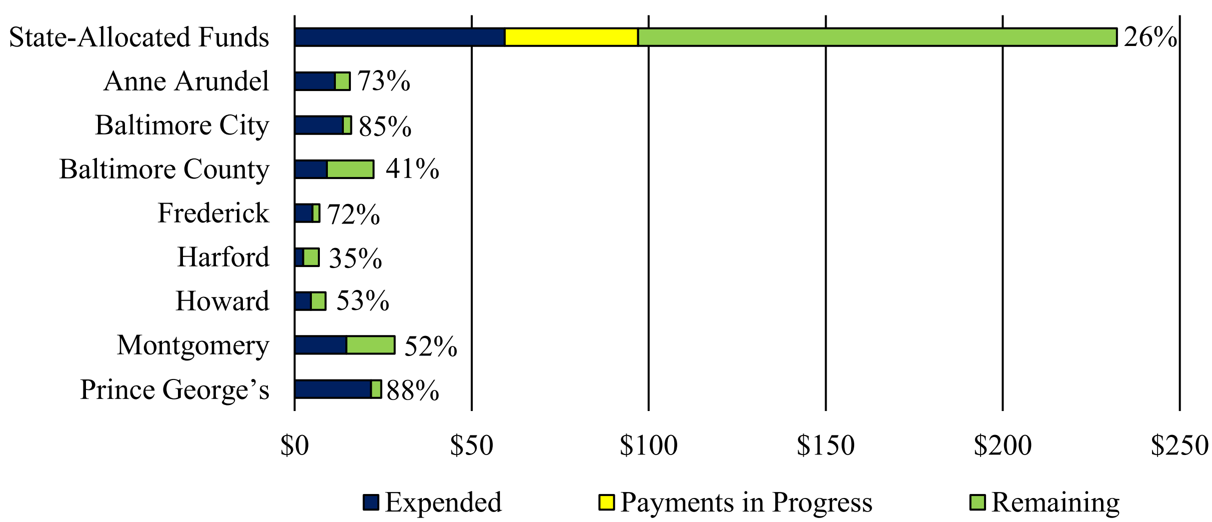
ERAP 1.0 Expenditures and Threshold for Recapture of Funds

As of September 30, 2021, ERAP 1.0 has provided $141.6 million in assistance to over 23,000 households in Maryland. **Exhibit 3** shows the amount of ERAP 1.0 funds expended, payments in progress, and funds remaining as of September 30, 2021; amounts are shown for both the State-allocated funds, which primarily have been distributed to counties through DHCD, as well as each of the direct allocation jurisdictions. The exhibit also shows each grantee's expenditure ratio, which is calculated as the percentage of the funds that were directly allocated from the U.S. Treasury to the jurisdiction that have been expended, not including funds retained for administrative purposes. (Each grantee can use up to 10% of their total ERAP 1.0 grant amount for administrative expenses.)

Exhibit 3

ERAP 1.0 Expenditures by Grantee as of September 30, 2021

($ in Millions)



ERAP: Emergency Rental Assistance Program

Note: Does not include funding available for program administration (10% of total grant amount). The U.S. Treasury will base decisions on the reallocation of funds on the percentage of non-administrative funds expended. Data for the eight local jurisdictions only includes the direct allocation from the U.S. Treasury and does not include any State allocated funds.

Source: Department of Housing and Community Development

For grantees that did not achieve an expenditure ratio of 30% by September 30, 2021, the U.S. Treasury may recapture a portion of unused funds and reallocate them to higher-performing grantees. U.S. Treasury guidance indicates that if reallocation occurs, priority will be given to other grantees within the same state. As shown in Exhibit 3, all eight local jurisdictions in Maryland that received a direct allocation exceeded the 30% threshold, while the State only achieved a 26% expenditure ratio. Maryland is one of 31 states to fall short of the threshold. DHCD is required to submit a program improvement plan to the U.S. Treasury by November 15, 2021, which has the potential to mitigate the recapture of excess funds. Maryland's excess funds that can potentially be recaptured and reallocated by the U.S. Treasury total $10.4 million. The U.S. Treasury will reevaluate grantees' expenditure ratios and make reallocations approximately every two months, with increasing thresholds for expenditures.

Other Rental Assistance

Prior to ERAP 1.0 and 2.0, both the State and local jurisdictions used federal funds from the Coronavirus Aid, Relief, and Economic Security Act to provide rental assistance to households behind on rent, including State and local Coronavirus Relief Funds as well as Community Development Block Grant, Emergency Solutions Grant, and Community Services Block Grant funds. Across all jurisdictions, $113.0 million was allocated to rental assistance from all of these sources, and $91 million was expended through the end of July 2021.

For more information contact: emily.haskel@mlis.state.md.us

Business Regulation

Status of the Unemployment Insurance Trust Fund and Study on Potential System Reforms

The unprecedented volume of Unemployment Insurance (UI) claims and benefit payments due to COVID-19 strained the State UI system to its limit and raised numerous concerns about the system's ability to effectively meet the needs of claimants and employers. As a result, during the 2021 legislative session, the General Assembly required a number of system reforms, including a Maryland Department of Labor-led study due by December 1, 2021, regarding various longer term reforms.

Program Overview

Unemployment Insurance (UI) generally provides temporary, partial wage replacement benefits of up to $430 per week to individuals who are unemployed through no fault of their own and who are willing to work, able to work, and actively seeking employment. Both the federal and state governments have responsibilities for UI programs. Generally, funding for the program is provided by employers through UI taxes paid to both the federal government for administrative and other expenses and to the states for deposit in their UI trust funds. Using federal tax revenues, the UI program is administered pursuant to state law by state employees. The Division of Unemployment Insurance within the Maryland Department of Labor (MDL) administers the State's UI program.

State law prescribes the tax structure, qualifying requirements, benefit levels, and disqualification provisions, but these laws must conform to broad federal guidelines.

Employer Contributions and Trust Fund Balance

Most Maryland employers pay State UI taxes, although State and local governments and some nonprofit organizations reimburse the Unemployment Insurance Trust Fund (UITF) for claims paid in lieu of paying taxes. Therefore, for most Maryland employers, the State UI tax rate is a function of:

- the employer's specific unemployment claims history; and
- the applicable tax table, which is based on the State's UITF balance and applies to most taxable employers.

Exhibit 1 shows the range of State UI taxes a typical employer owes based on the tax table in effect; there are other rates for new employers and in other limited circumstances. State UI taxes and reimbursements are typically due quarterly; however, Chapter 39 of 2021 allows employers with fewer than 50 employees to defer 2021 State UI tax payments or reimbursements until January 31, 2022, and authorizes the Secretary of Labor to offer a similar deferment in 2022. Separate legislation allows large reimbursing employers to defer third quarter 2021 reimbursements until January 31, 2022, if certain federal assistance was not made available to the employers. Chapter 39, in conjunction with a recent executive order, also prevents UI claims made during the COVID-19 pandemic from affecting an employer's experience rating component of its tax obligation. Employers have still felt and will continue to feel the effects of higher taxes, however, due to the applicable tax tables – Table F in 2021 and Table C in 2022 and 2023.

Exhibit 1
Tax Tables and Applicable Employer Tax Rates

	As of Sept. 30, if the Trust Fund Balance, As a Percentage of Taxable Wages		Trust Fund Balance ($ in Millions)		Then Next Year's Tax Rates Range from…			Annual Tax Per Employee (Rate x $8,500)		
Tax Table	**Exceeds**	**Up to**	**Exceeds**	**Up to**	**No Claims**	**Single Claim**	**Up to**	**No Claims**	**Single Claim**	**Up to**
A	5.0%	N/A	$995.8	N/A	0.3%	0.6%	7.5%	$25.50	$51.00	$637.50
B	4.5%	5.0%	896.2	$995.8	0.6%	0.9%	9.0%	51.00	76.50	765.00
C	4.0%	4.5%	796.6	896.2	1.0%	1.5%	10.5%	85.00	127.50	892.50
D	3.5%	4.0%	697.1	796.6	1.4%	2.1%	11.8%	119.00	178.50	1,003.00
E	3.0%	3.5%	597.5	697.1	1.8%	2.6%	12.9%	153.00	221.00	1,096.50
F	0.0%	3.0%	0.0	597.5	2.2%	3.1%	13.5%	187.00	263.50	1,147.50

Notes: Fund balance threshold dollar amounts are based on the 2020 taxable wage base and are subject to modest changes each year. A "single claim" represents the tax rate applicable to the lowest possible rate associated with nonzero (.0001 to .0027) benefit ratios. Taxes are applied to the first $8,500 earned by each employee, each year; compensation less than that amount reduces taxes owed accordingly. Table F is in effect in 2021; Table A had been in effect since 2016. Table C will be in effect in 2022 and 2023 pursuant to Chapter 73 of 2021.

As of September 30, 2021, the Unemployment Insurance Trust Fund balance was $853.7 million, reflecting a contribution of $450 million of federal stimulus funds.

Source: Department of Legislative Services

Benefit Payments

Generally, the weekly benefit amount that a claimant is eligible for is based on the quarterly wages that the claimant was paid for covered employment in the calendar quarter of the claimant's base period in which those wages were highest. The base period is the first four of the last five completed calendar quarters immediately preceding the start of the benefit year, or, if the individual does not qualify under that definition, the four most recently completed calendar quarters immediately preceding the start of the benefit year.

Weekly benefit amounts range from $50 to $430 per week, based on earnings in the base period. There is also a dependent allowance of $8 per dependent, for up to five dependents, although the allowance cannot raise the weekly benefit amount above $430. Generally, during a benefit year, a claimant is entitled to 26 times the claimant's weekly benefit amount. During periods of high unemployment, extended benefits may also be available. The first $50 of any wages earned by an individual receiving UI benefits in a given week is disregarded for purposes of calculating the weekly benefit amount, after which the benefit payment is reduced dollar for dollar. Legislation temporarily increased the amount disregarded from $50 to $200 during the state of emergency declared by the Governor due to the COVID-19 pandemic.

2021 Legislation Enhanced and Required Evaluation of the State UI System

The unprecedented volume of claims and benefit payments due to COVID-19 strained the State UI system to its limit, which raised numerous concerns about the system's ability to effectively meet the needs of claimants and employers. Consequently, during the 2021 legislative session, the General Assembly required a number of system reforms, including an MDL-led study due by December 1, 2021, regarding various longer-term reforms. Broadly, the new laws (1) required Table C to apply in calendar 2022 and 2023; (2) made administrative changes to assist employers in paying their taxes, specifically allowing them to defer payments under certain circumstances; (3) exempted certain UI benefit payments from being subject to the State income tax; (4) temporarily modified benefit calculations to assist claimants working part-time; (5) made system administrative changes that must be implemented by MDL; and (6) enhanced the State's work sharing program, which allows an employee to continue working at reduced hours and obtain UI benefits under certain circumstances.

In addition to those direct and immediate changes, Chapters 45 and 46 of 2021 require MDL to consult with the Department of Legislative Services (DLS) to study and make recommendations regarding various reforms to the UI system. Topics include expanding eligibility for UI benefits, increasing benefit payments, and exploring alternative approaches to the experience rating process, among others. MDL must (1) report monthly to DLS and the Joint Committee on Unemployment Insurance Oversight on the status of the study; (2) consult with the U.S. Department of Labor, other state UI agencies, and other stakeholders; and (3) examine and consider any report or recommendation made by the National Academy of Social Insurance Unemployment Insurance Task Force. By July 1, 2021, MDL was required to submit an interim report to the joint committee, and by December 1, 2021, MDL must submit a final report to the Governor, the joint committee, the Senate Finance Committee, and the House Economic Matters Committee. In its September monthly report, MDL briefly discussed the issues and alternatives that it is exploring for the final report and advised that it is on schedule to meet the December 1 deadline.

Potential Changes to Federal Law May Require State Law Changes

Congress is considering legislation to modernize state unemployment systems and address deficiencies that became apparent during the COVID-19 pandemic. Among other things, the legislation may require increased benefit levels and extended weeks of eligibility for unemployed workers; address the lack of access to UI for misclassified workers, low-income workers, part-time workers, and workers with nontraditional work histories; and make changes to ensure the solvency of UI trust funds. Depending on the changes that might be enacted, State law may need to be amended to ensure compliance and conformity with federal law.

For further information contact: Richard.Duncan@mlis.state.md.us

Business Regulation

Employer Vaccine Mandates

COVID-19 vaccination mandates have been issued by the federal government, other governmental entities, and various private employers in an effort to protect individuals against the spread of COVID-19. In response, some states have taken steps and some individuals have filed legal challenges against these mandates.

Employer COVID-19 Vaccine Mandates in Maryland

Various COVID-19 vaccination or testing mandates have been issued by employers and governmental entities across the nation, including in Maryland, to combat the spread of COVID-19. Many employers – both public and private – have found that vaccine mandates for employees generally result in a higher percentage of vaccinated employees.

Governor Lawrence J. Hogan, Jr.'s administration mandated that all employees of Maryland's nursing homes and hospitals, along with State employees in congregated living facilities, receive their first dose of a COVID-19 vaccine by September 1, 2021, or adhere to face covering requirements and submit to regular, ongoing COVID-19 testing. An individual may request a reasonable accommodation for bona fide medical or religious reasons. On April 23, 2021, University System of Maryland (USM) Chancellor Jay A. Perman issued a COVID-19 vaccination mandate for all eligible students, faculty, and staff who will be on its Maryland campuses, effective with the fall 2021 semester.

Baltimore City and Anne Arundel, Baltimore, Montgomery, and Prince George's counties have either vaccination or testing mandates for county employees. The public school systems in the aforementioned jurisdictions have imposed similar mandates, as has the Howard County public school system.

Legal and Legislative Challenges to Mandates

Maryland

Two USM students and a staff member joined together to file a lawsuit in the U.S. District Court on September 16, 2021, against Chancellor Perman and the USM Board of Regents requesting (1) declaratory relief ending the USM vaccine mandate and (2) a temporary restraining order and preliminary injunction enjoining the Chancellor or the Board from taking negative action against the plaintiffs. Likewise, on September 28, 2021, an administrative employee filed an action seeking an injunction to stop the mandate requiring all Montgomery County Public School employees to be vaccinated. The claimant argued that, although Montgomery County included medical exemptions in the mandate, it failed to include an exemption for sincerely-held religious beliefs. Montgomery County Public Schools has since announced it will allow for religious exemptions.

Other States

Legislation is pending in most states relating to COVID-19 vaccine mandates, in addition to the various COVID-19 vaccine requirements imposed by private and public employers. Legislation has been introduced in many states to prohibit vaccine mandates for employees or proof of vaccination for customers, while legislation in other states prohibits "discrimination" against unvaccinated individuals. For example, Pennsylvania's legislature moved to limit the powers of the state Secretary of Health and prohibit any vaccination or quarantine mandates, but Governor Tom Wolf vetoed the bill. In October 2021, Governor Greg Abbott issued an executive order banning any entity in Texas, including private employers, from requiring vaccinations for employees or customers, and requested that the state legislature codify the order. Montana prohibits discrimination based on vaccination status, and Arkansas requires employers to allow workers to opt out of COVID-19 vaccine requirements if they are tested weekly or can prove they have COVID-19 antibodies.

Actions taken by state and local governments as well as private industry to require COVID–19 vaccines or regular testing have led to some high-profile court challenges. In a lawsuit filed on September 13, 2021, several New York health care workers sued for temporary and preliminary injunctive relief blocking the mandate that all health care workers in New York be vaccinated by September 27, 2021, on the grounds that the state's vaccine regulation provided no religious exception. A federal judge agreed and temporarily blocked the regulation from taking effect. In another New York case that reached the U.S. Supreme Court, four educators challenged New York City Mayor Bill de Blasio's coronavirus vaccine mandate for all school employees. Justice Sonia Sotomayor denied an emergency request to block the city's vaccine mandate. A class-action lawsuit filed against United Airlines in Texas sought relief in the form of a temporary injunction, followed by a permanent injunction, enjoining United Airlines from terminating or placing an employee on indefinite unpaid leave as a result of refusing vaccination. On October 13, 2021, a federal judge granted the temporary restraining order, constraining United Airlines from removing any employee from its payroll for requesting an exemption.

Federal Executive Branch Action

The President Joseph R. Biden Jr. Administration has taken several steps to promote vaccination among various sectors of the American labor force, which will directly affect a large proportion of Maryland's workforce. The Centers for Medicare and Medicaid Services announced on September 9, 2021, that emergency regulations requiring COVID-19 vaccinations for nursing home workers will be expanded to include workers in hospitals, dialysis facilities, ambulatory settings, and home health agencies, among others, as a condition for participating in the Medicare and Medicaid programs. On the same day, President Biden signed an executive order mandating

COVID-19 vaccination for employees of all federal executive agencies and contractors who do business with the federal government, with exceptions only as required by law. An estimated 145,000 federal jobs are based in the State, and many more Marylanders commute to employment with the federal government or contractors in Washington, D.C., and other jurisdictions. The Department of Labor's Occupational Health and Safety Administration is developing an Emergency Temporary Standard that will require all employers with 100 or more employees to ensure their workforce is fully vaccinated or require any unvaccinated workers to produce a negative test result on at least a weekly basis before coming to work.

For more information contact: kelvin.lucas@mlis.state.md.us

Business Regulation

Cybersecurity and Information Technology

The importance of cybersecurity and information technology continues to rise in the face of recent cyberattacks that resulted in significant disruptions to government and private-sector operations. In Maryland, various steps have been taken to strengthen the cybersecurity of the State, and additional actions are being considered by the Joint Committee on Cybersecurity, Information Technology, and Biotechnology. At the federal level, recently enacted legislation targets cyberattacks directed at schools.

Cyberattacks in Maryland

In recent years, cybersecurity and privacy issues have received significant attention from the general public and policymakers as a result of the many ransomware attacks and data breaches that have occurred in Maryland and throughout the nation. For example, in 2021, multiple southern Maryland towns lost computer access after a third-party vendor was the victim of a ransomware attack; in 2020, a ransomware attack caused the information technology systems of the Baltimore County Public Schools to be unusable; and in 2019, government computer systems in Baltimore City were infected with ransomware rendering them inaccessible for weeks. Similarly, in July 2019, the licensing database of the Maryland Department of Labor was breached, and the personal identifying information (PII) of as many as 78,000 licensees may have been accessed by the hackers.

Recent State Action

In June 2019, Governor Lawrence J. Hogan, Jr. signed Executive Order 01.01.2019.07, which created the Maryland Cyber Defense Initiative to strengthen the State's ability to manage the effects of a cybersecurity incident. The initiative created the Office for Security Management within the Department of Information Technology (DoIT) and charged the office with responsibility for the direction, coordination, and implementation of an overall cybersecurity strategy for all Executive Branch information technology systems.

In July 2021, the Governor announced several new cybersecurity measures that his office will be undertaking, including (1) a new partnership with the National Security Agency; (2) a memorandum of understanding with the University of Maryland, Baltimore County to establish the Maryland Institute of Innovative Computing; and (3) an executive order creating a statewide privacy framework to govern the manner in which the State secures the PII of its citizens.

During the 2021 interim, the Joint Committee on Cybersecurity, Information Technology, and Biotechnology (JCCIB) reviewed the issue of cybersecurity threats facing the State and heard from many private and public sector entities to understand the State's cybersecurity posture. Broadly, JCCIB found that the State faces vulnerability due to (1) the need for modernization of numerous legacy systems of government entities; (2) fragmentation of cybersecurity operations across government agencies with various degrees of cybersecurity funding, policies, preparedness, and practices; and (3) the possibility of State, local, and municipal government entities requiring assistance in the operations of critical infrastructure.

State Legislative Action

Since the 2019 session, the State has enacted a number of laws related to cybersecurity issues. Of particular significance, Chapter 506 of 2020 requires the Commission to Advance Next Generation 9-1-1 Across Maryland to provide recommendations for statutory changes to address cybersecurity threats to the 9-1-1 system.

Most recently, during the 2021 session, the State reformed the responsibilities of DoIT. Chapter 218 of 2021 requires the Secretary of Information Technology to consult with the Attorney General to oversee a consistent cybersecurity strategy specifically for the Executive Branch. Additionally, Chapter 683 of 2021 establishes the Center for Cybersecurity at the University of Maryland, Baltimore County in order to provide research and support for cybersecurity-related activities. Chapter 425 of 2021 expands the list of network-related prohibited acts on a broad array of computer networks in the State. Chapter 425 prohibits a person from performing acts, including exceeding authorized network access and distributing valid access codes to unauthorized persons, on public school or health care facility networks with the intent to impair network functioning.

Legislative Action in Neighboring States

Since 2019, the neighboring states of Delaware and Virginia have enacted cybersecurity laws on topics ranging from electoral system protections to curriculum development for cybersecurity training. For example, legislation enacted in Virginia requires all licensees licensed under statewide insurance laws to create security programs consistent with a licensee's risk assessment that will protect identifiable information of consumers. The same legislation outlines standards for investigation and notification in response to a cyberattack. Additional legislation tasks Virginia's Chief Information Officer with annually updating a cybersecurity curriculum that will be used to train all employees across the legislative, judicial, and executive branches and within independent agencies in the state.

Delaware has enacted legislation focused on the investigation of cybersecurity threats and mandatory security program implementation that is substantially similar to Virginia's recent legislation. Additionally, the Delaware Department of Technology and Information is required to establish a central hub to oversee statewide cyberthreat mitigation within the state.

Federal Action

On October 8, 2021, President Joseph R. Biden, Jr. signed the K-12 Cybersecurity Act into law in response to cybersecurity attacks directed at schools. Narrow in scope, the law directs the federal Cybersecurity and Infrastructure Security Agency to examine cybersecurity-related risks exclusive to K-12 educational settings. The Director of Cybersecurity and Infrastructure Security is required to conduct a study and make recommendations specific to K-12 related cybersecurity risks.

For further information contact: Alexis.Foxworth@mlis.state.md.us and Donavan.Ham@mlis.state.md.us

Public Safety

Policing Reform

While a number of police reform measures have been enacted in recent years, most notably several bills during the 2021 legislative session, police reform legislation is expected to again be discussed during the 2022 legislative session as debate continues over improvements in police oversight and consequences for police misconduct.

2021 Police Reform Legislation

Due to growing concerns in 2020 surrounding police misconduct, the General Assembly took action to address the issue during the 2021 legislative session. Several bills were enacted, the major provisions of which are discussed below:

Use of Force by Police Officers

Effective July 1, 2022, Chapter 60 of 2021 (1) establishes the Maryland Use of Force Statute, under which a police officer may not use force against a person unless, under the totality of the circumstances, the force is necessary and proportional to prevent an imminent threat of physical injury to a person or effectuate a legitimate law enforcement objective and (2) provides criminal penalties for violations. A police officer must cease the use of force as soon as (1) the person on whom the force is used is under the police officer's control or no longer poses an imminent threat of physical injury or death to the police officer or to another person or (2) the police officer determines that force will no longer accomplish a legitimate law enforcement objective.

Chapter 60 also requires a police officer to (1) when time, circumstances, and safety allow, take steps to gain compliance and de-escalate conflict without using physical force; (2) intervene to prevent or terminate the use of force by another police officer beyond the authorized use of force described above; (3) render basic first aid to a person injured as a result of police action and promptly request appropriate medical assistance; and (4) fully document all use of force incidents that the officer observed or was involved in.

Body-worn Cameras

Chapter 60 also requires that by July 1, 2023, the Department of State Police (DSP), the Anne Arundel County Police Department, the Howard County Police Department, and the Harford County Sheriff's Office require the use of a body-worn camera (BWC) by each law enforcement officer employed by the law enforcement agency who regularly interacts with members of the public as part of the law enforcement officer's official duties, subject to the agency's policy on the use of BWCs. A law enforcement agency of a county that is not subject to the July 1, 2023 deadline must require the use of BWCs by its officers by July 1, 2025.

Search Warrant Issuance and Execution

Effective October 1, 2021, Chapter 62 of 2021 made various modifications to provisions of law relating to search warrants. These include (1) limiting the circumstances under which a "no-knock" search warrant – a warrant that a law enforcement officer may execute without giving prior notice of the officer's authority or purpose – may be used in situations where the life or safety of a law enforcement officer or other person may be endangered; (2) limiting, absent exigent circumstances, the execution of no-knock search warrants to between the hours of 8:00 a.m. and 7:00 p.m.; and (3) requiring the use of BWCs by officers executing search warrants if the agency they are employed by requires the use of BWCs.

Inspection of Records Relating to Police Officer Misconduct

Chapter 62 also altered the law governing disclosure of records relating to police officer misconduct. Previously, police department records relating to officer misconduct were typically considered to be personnel records and therefore barred from disclosure under the Maryland Public Information Act (PIA). Chapter 62 provided that a record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and a record relating to a disciplinary decision, is not a personnel record for purposes of PIA. Instead, these records are now generally subject to discretionary denial of inspection as provided under PIA. However, a custodian must allow inspection of these records by the U.S. Attorney, the Attorney General, the State Prosecutor, or the State's Attorney for the jurisdiction relevant to the record.

Investigations of Deaths Caused by Police Officers

Effective October 1, 2021, Chapter 132 of 2021 established an independent investigative unit within the Office of the Attorney General to investigate all alleged or potential police-involved deaths of civilians. A law enforcement agency must notify the independent investigative unit of any alleged or potential police-involved death of a civilian as soon as the agency becomes aware of the incident and cooperate with the unit in connection with the investigation. In conducting investigations, the unit may act with the full powers, rights, privileges, and duties of a State's Attorney, including the use of a grand jury in any county. To investigate and assist with the investigation of alleged criminal offenses committed by police officers, the independent unit may (1) detail one or more police officers employed by DSP and (2) employ other civilian personnel as needed.

Procedures During Traffic Stops

Effective July 1, 2022, Chapter 59 of 2021 requires, at the commencement of a traffic stop or other stop, absent exigent circumstances, a police officer to display proper identification to the stopped individual and provide specified identifying information and the reason for the stop.

Changes to the Maryland Police Training and Standards Commission and Requirements for Becoming a Police Officer

Chapter 59 also alters the composition of the Maryland Police Training and Standards Commission (MPTSC) and requires the commission to (1) require specified training in the proper level and use of force to be used by police officers; (2) develop and administer a training program on matters relating to police training and standards for citizens who are appointed to serve on the commission; (3) develop and administer a training program on matters relating to police procedures for certain individuals who participate in police disciplinary matters; (4) hold law enforcement agencies accountable for violations of use of force requirements and work with the Governor's Office of Crime Prevention, Youth, and Victim Services to ensure that State grant funding is withheld from agencies that are found in violation; and (5) develop testing and training for implicit bias.

Applicants to be certified by MPTSC as police officers must submit to specified mental health screening and a physical agility assessment. Certified officers must then submit to a mental health assessment every two years and an annual physical agility assessment to establish continuing fitness to carry out duties as a police officer. Moreover, Chapter 59 provides that prior marijuana use is not a disqualifier for certification as a police officer.

Programs Designed to Encourage Individuals to Become Police Officers

Chapter 59 establishes programs designed to encourage individuals to become police officers, including (1) the Maryland Loan Assistance Repayment Program for Police Officers to assist in the repayment of higher education loans owed by police officers in the State and (2) the Maryland Police Officers Scholarship Program to provide tuition assistance for students attending specified degree programs with the intent to become police officers as well as current police officers attending degree programs to further the police officers' careers in law enforcement.

Increased Limits on Civil Liability for Cases Involving Tortious Acts Committed by Law Enforcement Officers

Chapter 59 also increases the limits on civil liability for claims subject to the Maryland Tort Claims Act and the Local Government Tort Claims Act that arise from intentional tortious acts or omissions or a violation of a constitutional right committed by a law enforcement officer.

Discipline of Police Officers

In addition, Chapter 59 makes significant changes to State law pertaining to discipline of police officers. Among these changes is the repeal of the Law Enforcement Officers' Bill of Rights (LEOBR), which had been enacted in 1974 to provide a framework for disciplinary procedures initiated by law enforcement agencies against officers and to guarantee officers specified procedural safeguards in that process. Chapter 59 replaced LEOBR with a system providing for the creation of administrative charging boards in each county (and at least one statewide administrative charging board) to, among other duties, review investigations of police misconduct based on citizen complaints, make determinations about whether administrative disciplinary actions should proceed against police officers in those matters, and, if appropriate, recommend discipline. A police officer who is administratively charged with misconduct may elect to accept the proposed discipline or have the matter adjudicated before a trial board. Chapter 59 also provides for the establishment of police accountability boards in each county. Accountability boards are required to hold quarterly meetings to improve matters of policing, receive complaints of police misconduct from members of the public, and submit annual reports to the governing bodies of the counties with the boards identifying disciplinary trends and making recommendations on policy changes to improve police accountability.

Potential Issues for Revision and Clarification

Legislation is expected to be introduced during the 2022 session to clarify and refine police reform provisions, which may involve the issues of (1) qualified immunity for police officers; (2) investigation and prosecution of cases involving deaths caused by police officers; (3) issuance of no-knock search warrants; (4) limits on civil liability; and (5) police disciplinary procedures.

For more information contact: jameson.lancaster@mlis.state.md.us

Public Safety

Privately Made Firearms ("Ghost Guns")

Privately made firearms are assembled from unfinished parts or constructed to some degree from raw materials. Such parts and materials are generally not treated as firearms under State or federal law until completed and are not subject to regulation or serialization. Unlike purchasers of completed rifles, shotguns, and regulated firearms, purchasers of parts and build kits for firearms are not required to undergo a background check and the sales of the parts used are not required to be recorded.

Overview

The General Assembly has considered legislation on the subject of privately made firearms or "ghost guns" during the past few legislative sessions. While the term "ghost gun" is neither technical nor descriptive of a specific type of firearm, it most often refers to a privately made unserialized firearm constructed using parts either (1) sold as a do-it-yourself build kit, which contains a combination of finished and unfinished parts, including an unfinished frame or receiver that can be converted into a fully functional firearm or (2) manufactured by its maker using 3D printing, computer-controlled milling, polymer casting, or other production methods.

According to the U.S. Department of Justice, between 2016 and 2020, over 23,000 ghost guns were recovered by law enforcement from potential crime scenes, including 325 in connection with homicides and attempted homicides. In November 2020, the Baltimore Sun reported that between 2016 and 2019, more than 12,000 build kits were shipped to Maryland, with total sales of the kits exceeding $1.0 million. The Baltimore Sun further reported that the Baltimore City Police Department recovered 126 privately made firearms in 2020 compared to 29 recovered in 2019, and that nearly one-quarter of such firearms recovered were from individuals under the age of 21.

Federal Regulation

The Gun Control Act of 1968 (GCA) regulates the manufacture, import, sale, and possession of firearms in the United States. The GCA requires individuals engaged in the business of manufacturing, importing, or dealing firearms to be licensed by the federal government, and requires licensed firearm manufacturers and importers to engrave or cast a serial number on the frame or receiver of a firearm. The GCA was amended to require licensed firearms dealers to perform background checks when transferring firearms to individuals other than federal licensees and maintain records of all firearm transfers. However, because privately made firearms are generally not made for commercial purposes, federal requirements for serialization do not apply to the production. Federal laws regarding background checks also do not apply to those items not included in the statutory and regulatory definitions of the term "firearm."

In May 2021, the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) proposed regulations that would (1) update the federal definitions of “firearm” and “frame or receiver” to include certain incomplete frames or receivers; (2) require background checks, like those currently required for completed firearms, frames, and receivers, on transfers of certain partially complete frames and receivers; and (3) require federally licensed firearms manufacturers to assign a partially complete frame or receiver a unique serial number. The proposed regulation also would require federally licensed firearms dealers and gunsmiths to apply a unique serial number to privately made firearms that come into their possession. The attorneys general of 22 states, including Maryland, have submitted a comment to the ATF to encourage the finalization of the regulations. Similar federal legislation, the Untraceable Firearms Act, was also introduced in May 2021 and is currently pending before the U.S. Congress.

State Regulation

Maryland law generally requires the completion of a background check for individuals who purchase, lease, or receive a firearm, including a completed frame or receiver, through a transfer. State law does not contain a specific requirement that firearms be serialized, although persons are prohibited from obliterating, removing, changing, or altering a manufacturer’s identification mark or number on a firearm. Much like federal law, State law defines a “firearm” as (1) a weapon that expels, is designed to expel, or may readily be converted to expel a projectile by the action of an explosive and (2) the frame or receiver of such a weapon. However, unlike federal law, State law does not define what constitutes a “frame or receiver.” Incomplete frames and receivers and other basic parts and media that can be used to create privately made firearms do not meet the definition of the term “firearm;” therefore, their sale (and possession) is generally unregulated under Maryland law.

Other Jurisdictions

Eight states (California, Connecticut, Hawaii, Nevada, New Jersey, New York, Rhode Island, and Washington) and the District of Columbia have enacted laws regulating privately made firearms to varying degrees. California and Connecticut have enacted laws that require privately made firearms to be registered and marked with a serial number obtained from a governmental agency within each state. Nevada and New Jersey require serialization of unfinished frames and receivers by federally licensed firearms manufacturers and importers. The District of Columbia passed legislation in 2020 to ban build kits and specifically the possession of unfinished frames and receivers and untraceable firearms.

Some cities and local jurisdictions have also started to implement laws to address privately made firearms. In August 2021, San Diego became the first city in California to prohibit the sale of unserialized frames and receivers, and San Francisco passed similar legislation shortly thereafter. In Maryland, Montgomery County passed legislation in April 2021 to restrict the access of privately made firearms to minors and in places of public assembly within the county.

For more information contact: holly.vandergrift@mlis.state.md.us

Public Safety

State Correctional System Update

Policy changes impacting the adult criminal justice system, accelerated by the COVID-19 pandemic, have resulted in historically low populations of offenders incarcerated in State facilities or supervised in the community. Nearly 3,400 prison beds have been eliminated since 2015 for various legal, operational, and maintenance reasons. The population decline has allowed the Department of Public Safety and Correctional Services to implement social distancing and isolation protocols more easily; however, approximately 30% of staff and inmates have tested positive for the COVID-19 virus.

Background

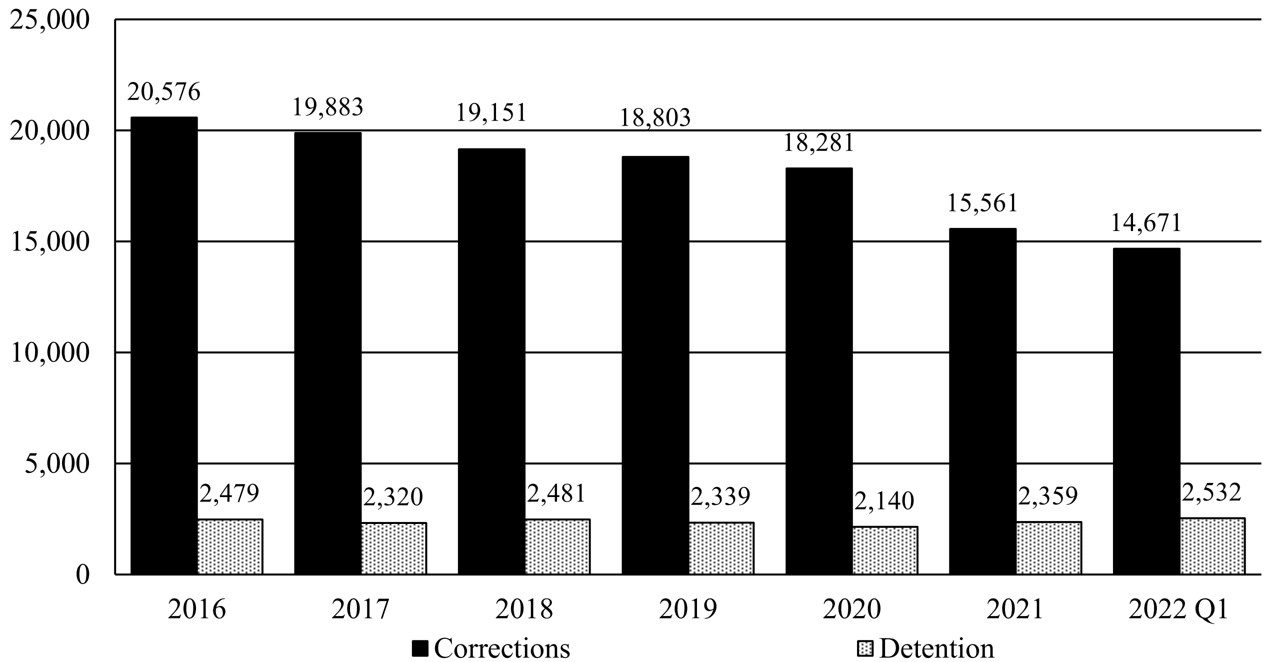
The Department of Public Safety and Correctional Services (DPSCS) is responsible for operating 13 State correctional institutions and 5 pretrial detention facilities in Baltimore City, whose combined average daily population (ADP) was approximately 18,000 in fiscal 2021. In addition, the Division of Parole and Probation (DPP) provides court-ordered supervision to offenders in the community and operates 42 parole and probation offices. For fiscal 2022, DPSCS has a total budget of over $1.5 billion and approximately 9,253 employees, accounting for 5.8% of State general fund expenditures and 11.6% of the total State workforce.

Population Trends

The number of offenders in DPSCS custody sharply declined in fiscal 2021, continuing trends set in motion during fiscal 2020. **Exhibit 1** shows ADP of sentenced and detained individuals in DPSCS custody since 2016.

The COVID-19 pandemic has had a significant impact on the incarcerated population, which declined by 5% between March and May 2020 as 228 inmates were released to home detention and over 1,000 inmates were released early based on diminution credits or parole conditions. Overall, the 17% decline from March 2020 to the low in June 2021 is the largest decrease in ADP in the history of the State prison system over a comparable period. In the first quarter of fiscal 2022, an average of 14,671 offenders were incarcerated, while 2,532 were detained in pretrial detention. Although the correctional population is on the decline, trial delays due to court closures have contributed to the detained population increasing since fiscal 2020. Pretrial ADP now stands above pre-COVID levels of population. DPSCS manages this increasing pretrial population by assigning detainees to cells previously occupied by sentenced inmates at the Maryland Reception, Diagnostic, and Classification Center in Baltimore City.

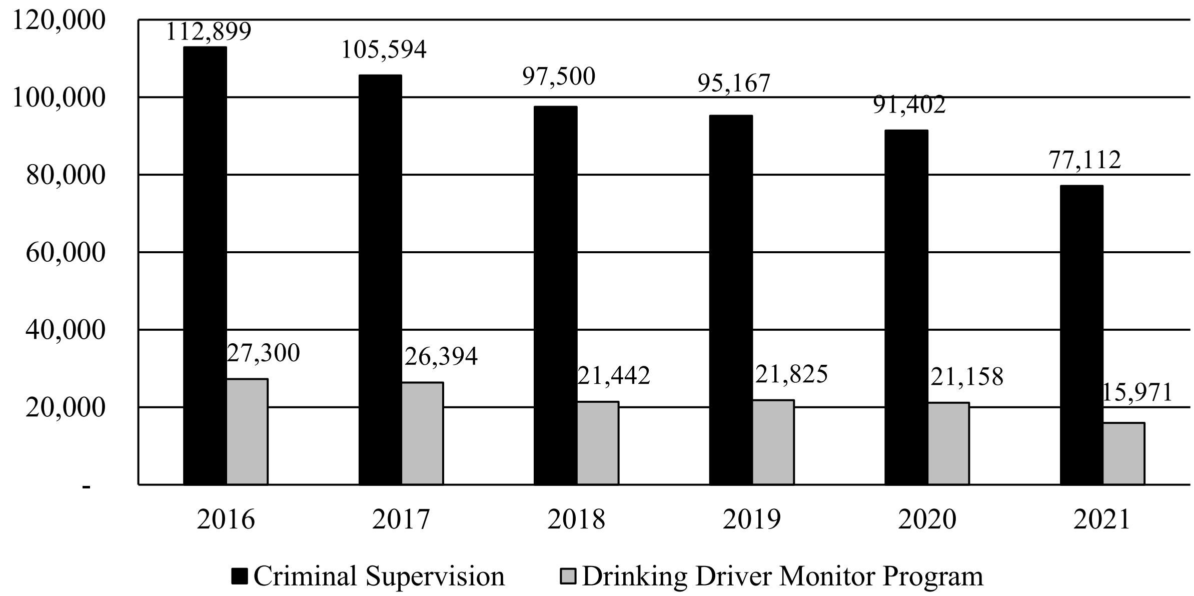
Exhibit 1
Average Daily Population
Fiscal 2016 – 2022 Q1



Source: Department of Public Safety and Correctional Services

Exhibit 2 depicts the total number of cases under community supervision, which includes criminal supervision (parole, probation, and mandatory release cases), and cases under the Drinking Driver Monitor Program (DDMP). In fiscal 2021, DPP supervised 77,112 active criminal cases and 15,971 active DDMP cases. Criminal cases have dropped 16% since fiscal 2020 and 32% since fiscal 2016. DDMP cases declined dramatically due to COVID-19, falling 25% since fiscal 2020 and 41% since fiscal 2016 despite a stable caseload from 2018 to 2020. Total criminal cases for DPP declined by an average of 6,600 each year since fiscal 2016.

Exhibit 2
Total Community Supervision Cases Supervised
Fiscal 2016-2021



Source: Department of Public Safety and Correctional Services; Department of Legislative Services

Capital Plan and Facility Openings and Closures

The fiscal 2022 capital budget plan for DPSCS includes $3.7 million in general obligation bonds for infrastructure and electrical improvements to facilities in the Jessup region and $4.7 million for construction projects at local jails. Several other security, housing, and infrastructure projects were delayed but are included in the *Capital Improvement Program* for future years totaling $390 million for construction of a large Therapeutic Treatment Center in Baltimore City and $270 million for all other capital projects.

DPSCS continues to consolidate facilities, staff, and resources as the number of offenders under custody declines. From July 2015 to July 2021, the department eliminated about 3,400 beds for various legal, operational, and maintenance reasons at locations in Baltimore City, Hagerstown, Jessup, and the Eastern Shore. Most recently, DPSCS fully depopulated the Brockbridge Correctional Facility and the Eastern and Southern Maryland Pre-Release Units.

Operational Impact of COVID-19

In response to the COVID-19 pandemic, DPSCS closed correctional facilities to the public in March 2020 and also restricted movement throughout facilities to allow for social distancing of inmates and staff. Precautions included grab-and-go lunches, extra recreation time (no contact sports), temporary closure of several Maryland Correctional Enterprises shops, and cessation of in-person volunteer services and programming. Disciplinary and administrative segregation policies were also modified to prevent transmission risk. Community supervision activities went remote, as did many administrative activities for the department. While much of the in-person operations have resumed, remote supervision techniques are employed at a much greater rate than prior to the pandemic.

DPSCS can determine the amount of isolation and quarantine space based on need due to the long-term trend of population decline. As of October 2021, the department has identified 1,056 quarantine and 684 isolation cells across the State prison system. There was a slight decrease from the prior year reflecting the ongoing vaccination efforts. Along with quarantine space, temporary medical tents are in operation in each region to treat acute cases that do not require hospitalization. Due to federal aid, nearly all COVID-19 related costs were reimbursed to the benefit of the General Fund.

COVID-19 Testing and Cases

DPSCS began testing all inmates and staff for COVID-19 in May 2020. As of October 13, 2021, 4 staff and 33 inmates have died due to the virus, at least 2,718 staff and 4,613 inmates have contracted the virus, and there are 77 active cases among staff and 23 active cases among inmates. DPSCS has successfully kept the positivity rate among inmates lower than for staff. Active cases are comparable to the levels in October 2020 but much lower than the highs seen in summer 2020 and winter 2020/2021.

In January 2021, all DPSCS facility staff became eligible for the COVID-19 vaccine through onsite or private providers, and in April 2021, all inmates became eligible for the vaccine. As of October 2021, approximately 27% of inmates have refused the vaccine. These inmates are tested regularly, whereas vaccinated inmates are not tested unless contact with COVID-19 is suspected. The Maryland Department of Health cooperates with DPSCS to provide nursing staff and supplies to administer COVID-19 tests and vaccines. As of September 1, 2021, all staff working in congregate facilities must either provide proof of full vaccination or submit to at least weekly COVID-19 tests.

Criminal Law

Legalization of Cannabis

As the number of states that have legalized adult-use cannabis continues to grow, the legalization of cannabis remains a major topic of discussion in Maryland. The Speaker of the House of Delegates has expressed support for a referendum on the 2022 general election ballot, and the House of Delegates has formed a workgroup to study the issue. Legislation regarding legalization and other related issues is likely to be introduced during the 2022 legislative session.

Status of Legalization of Cannabis for Adult Use in the United States

Even though cannabis is considered a Schedule I substance under the Controlled Substances Act and is illegal under federal law, an increasing number of states have legalized cannabis for adult use. As of October 2021, 18 states and the District of Columbia have legalized cannabis for adult use; 13 of these jurisdictions used a ballot initiative, and 6 jurisdictions enacted legislation. Reasons for increased state-level legalization of adult-use cannabis include the lack of federal action, the need to address racial disparities that have resulted from the enforcement of state laws prohibiting the use of cannabis, and the desire to regulate and generate revenue from a product that is thriving in the illegal market.

At the federal level, the Marijuana Opportunity, Reinvestment, and Expungement (MORE) Act of 2020 was the first comprehensive cannabis legalization bill to pass a chamber of the U.S. Congress. The MORE Act of 2021 (H.R. 3617) and the Cannabis Administration and Opportunity Act (currently a discussion draft) utilize different approaches to achieve similar objectives, including legalizing cannabis by removing it from the Controlled Substances Act; recognizing state laws governing cannabis; subjecting the cannabis industry to a federal tax; expunging specified federal cannabis offenses; vacating and adjusting criminal sentences for specified cannabis crimes; and providing grants to communities adversely affected by the war on drugs.

Cannabis Legalization Initiatives and Related Efforts in Maryland

Although adult use of cannabis is not legal in Maryland, the State has legalized medical cannabis, decriminalized the possession of small amounts of marijuana, and authorized the expungement of convictions for possession of marijuana. Also, the Maryland Medical Cannabis Commission (MMCC) has contracted with private entities to conduct specified market studies and taken steps to assist the State in preparing for the legalization of adult-use cannabis.

Decriminalization

In Maryland, a defendant in possession of 10 grams or more of marijuana is guilty of a misdemeanor and subject to imprisonment for up to 6 months and/or a $1,000 fine. Pursuant to legislation enacted in 2014, possession of less than 10 grams of marijuana is a civil offense, punishable by a fine of up to $100 for a first offense with increased fines for subsequent offenses. The number of arrests for marijuana possession has decreased from 20,600 in 2014 to 14,931 in 2019, a 27.5% decrease. Of the states that have decriminalized cannabis possession, Maryland has the lowest decriminalized possession amount.

Expungement

Court records are not automatically expunged in Maryland even if the crime on which the conviction is based is no longer a crime. In general, a petition to expunge a conviction for a crime when the act on which the conviction is based is no longer a crime can be filed at any time. Convictions for possession of marijuana under §5-601 of the Criminal Law Article have been eligible for expungement since 2017. A petition for expungement of such a conviction may be filed by a defendant four years after the later of the conviction or the satisfactory completion of the sentence, including probation. Defendants whose charges for possession of marijuana resulted in a disposition other than a conviction have been eligible to file a petition for expungement, subject to specified timelines and criteria, for several years.

Chapter 21 of 2021 prohibits the Maryland Judiciary Case Search from in any way referring to the existence of a District Court criminal case in which a charge of possession of marijuana was the only charge in the case and the charge was disposed of before October 1, 2014.

Legislative Workgroups

The General Assembly has taken steps to study the possible legalization of adult-use cannabis. In February 2019, the President of the Senate and Speaker of the House of Delegates created the Marijuana Legalization Workgroup. The workgroup's purpose was to consider issues regarding the legalization of marijuana, including the impact on the health of State residents and the criminal justice system. Further, the workgroup was expected to examine how to regulate legalized marijuana; how to tax and license the sale of legalized marijuana; and the potential for small, minority and women-owned businesses to participate in the legalized marijuana market. To conduct its work, the workgroup formed sub-workgroups that met and developed reports of their activities. The full workgroup did not make final recommendations.

In July 2021, the Speaker of the House of Delegates announced support for a referendum to legalize cannabis on the 2022 general election ballot. The Speaker also established the House Cannabis Referendum and Legalization Workgroup to craft the implementation of a legalized cannabis program in Maryland, if voters approve the ballot question in November 2022. The program should consist of (1) the regulatory structure (including taxation) governing the production, sale, and possession of legalized cannabis; (2) expungement of previous cannabis convictions and related criminal matters; (3) a structure for equitable ownership in cannabis-related businesses; and (4) social equity programs to compensate communities impacted by marijuana-related crimes. The workgroup held several briefings during the 2021 interim and will continue to meet during the 2022 session.

Maryland Medical Cannabis Commission Initiatives

Medical cannabis became available for sale in Maryland in December 2017. MMCC oversees the program and licenses cannabis growers, processors, dispensaries, and independent testing laboratories. State law limits the number of medical cannabis grower licenses to 22 and the number of medical cannabis processor licenses to 28. There are currently 101 dispensaries in the State. As of October 2021, there were 143,150 qualifying patients in Maryland.

In 2020, MMCC contracted with Mathematica and Botec Analysis to conduct an assessment of the State's medical cannabis market and the economic and fiscal implications of a potential future adult-use cannabis market. In December 2020, the *Comprehensive Market Analysis of Medical and Adult-Use Cannabis in Maryland* was released. The report found that without legalization, patient numbers in the medical cannabis program could increase to up to 300,000 but would grow to a lesser extent or even decrease if patients shifted to the adult-use market. As for the economic and fiscal implications of adult-use cannabis, a 10% tax rate for retail and wholesale sales would generate total sales tax revenues of approximately $97 million and business tax revenues of approximately $33 million. A 15% tax rate for retail and wholesale sales would generate total sales tax revenue of about $117 million and business tax revenues of about $29 million. The report found that total consumption of medical and adult-use cannabis after legalization is estimated to average about 240,000 pounds per year but could be as much as 316,000 pounds per year, which far exceeds the approximately 123,000 pounds per year produced by licensed growers in Maryland.

MMCC has been analyzing the statutes and regulations of other states that have legalized cannabis for adult use and tracking the implementation of key policy issues, including social equity measures. MMCC has also been evaluating their current operations to identify operational needs to implement an expanded adult-use program.

MMCC also commissioned a study of the public health and safety impacts of adult-use legalization. The results of this analysis are discussed in detail in "Public Health Impacts of Cannabis Legalization" within the Health and Health Insurance section of this *Issue Papers of the 2022 Session*.

Recent Legislation

During the 2021 legislative session, the General Assembly considered legislation to legalize adult-use cannabis. Senate Bill 708 and House Bill 32 of 2021 included many provisions similar to those in states that have legalized cannabis. Generally, the bills would have legalized marijuana, renaming it cannabis, for individuals at least age 21 by establishing (1) a regulatory and taxation framework for cannabis establishments within the Alcohol and Tobacco Commission; (2) provisions related to social equity in the legal cannabis industry; and (3) a process for dismissal of or postconviction relief for marijuana-related offenses and expungement of the dispositions of marijuana-related charges.

Adult-use Legalization Laws in Other States – Illinois and Virginia

Illinois and Virginia are two of the states that have recently legalized adult-use cannabis, and their statutes reflect a growing trend among states to include social equity provisions in their statutes to address the disparities experienced by racial groups that have been disproportionately impacted by the criminalization of cannabis. Such provisions include licensing preferences for minority applicants, small business loans and grants, community reinvestment, and new license categories. In addition to social equity provisions, both statutes also address the treatment of criminal records for marijuana offenses.

Illinois' adult-use cannabis law, passed in 2019, includes several social equity provisions. Foremost of these provisions was the establishment of "social equity applicants" for all available cannabis licenses. These applicants must meet specified criteria, such as majority ownership and control by individuals who have been arrested for, convicted of, or adjudged to be a ward of the juvenile court for any offense that is eligible for expungement (which is also addressed in the legislation). Qualified social equity applicants may receive 50 points out of a total of 250 points toward receiving approval for a license. Illinois also created a $30 million grant and low-interest loan fund to help qualified social equity applicants defray the start-up costs associated with obtaining a license to operate in the state's cannabis market.

In early 2021, Virginia enacted legislation to legalize adult-use cannabis. Much of the Virginia law mirrors other state laws. Beginning on July 1, 2021, an individual 21 years of age or older may possess one ounce or less of cannabis for personal use and may grow up to four plants in a private residence for personal use. The sale of cannabis in Virginia will not begin until January 1, 2024, to give the state time to build the industry and establish a new government entity to regulate the state's adult-use cannabis market. The law also includes social equity licensing and community reinvestment provisions. In addition, by July 1, 2025, after the overhaul of various state record-keeping systems, all records, including records of arrests, charges, and convictions, for simple possession of marijuana or misdemeanor possession with the intent to distribute marijuana will be automatically sealed.

Issues for Consideration

The legalization of adult-use cannabis is complex and involves consideration of many legal and regulatory issues. In addition to regulating and taxing the legal adult use of cannabis, the General Assembly will have to take into account the continued designation of cannabis as a Schedule I controlled dangerous substance under federal law. Legislation addressing adult-use legalization will need to consider how to integrate the State's existing medical cannabis program; the appropriate regulatory body to oversee adult-use legalization; the licensing and taxation structures of the adult-use cannabis market; inclusion of social equity provisions; criminal justice reforms (including whether and how to effectuate automatic expungement); and public safety and health concerns.

For further information contact: David.Smulski@mlis.state.md.us

Criminal Law

Juveniles Charged as Adults

Because the juvenile court does not have jurisdiction over all cases involving juveniles, every year hundreds of individuals younger than age 18 are directly charged as adults in the adult criminal system. Although statutory provisions authorize the transfer of cases between the two court systems, when eligible and appropriate, advocates have argued that the juvenile court is the appropriate venue in which all cases involving individuals younger than age 18 should be initiated. The Juvenile Justice Reform Council focused on this issue during the 2021 interim and recommended that the State require all juvenile cases to originate in the juvenile court.

Background

Although the juvenile court generally has jurisdiction over children alleged to be delinquent, it does not have original jurisdiction over children at least age 16 who are alleged to have committed specified violent crimes, children age 14 and older charged with a crime punishable by life imprisonment, and children who have previously been convicted as an adult of a felony and are subsequently alleged to have committed an act that would be a felony if committed by an adult. Juveniles who meet one of these criteria are instead directly charged as adults in the adult criminal system. However, subject to limited exceptions, a circuit court exercising criminal jurisdiction may transfer a case involving such a child to the juvenile court if such a transfer is believed to be in the interests of the child or society ("reverse waiver"). Cases that originate in the juvenile system and meet eligible criteria may likewise be waived to adult court if the juvenile court has determined that the child is an unfit subject for juvenile rehabilitative measures. A hearing is required for both of these types of transfers, and statutory provisions further specify the factors that must be considered.

According to data compiled by the Governor's Office of Crime Prevention, Youth, and Victim Services (GOCPYVS), 7,800 juveniles were charged as adults during 2013 through 2020. Approximately 60% of the juveniles were age 17 at the time they were charged, and the most prevalent types of charged offenses included armed robbery, first-degree assault, firearm possession, first-degree murder, and carjacking.

Legislation has been proposed in multiple sessions that would have eliminated direct charging and required that all proceedings against individuals younger than age 18 be initiated in the juvenile court.

Juvenile Justice Reform Council

Chapters 252 and 253 of 2019 established the Juvenile Justice Reform Council. Among other tasks, the council was required to research best practices for the treatment of juveniles who are subject to the criminal and juvenile justice systems and identify and make recommendations to limit or otherwise mitigate risk factors that contribute to juvenile contact with these systems. When the council submitted its final report in January 2021, one of its recommendations was to improve data sharing among agencies that serve juveniles charged as adults by requiring GOCPYVS to develop a data collection plan in order to better understand the issue of juveniles charged as adults at every level of the adult criminal justice system. Chapter 596 of 2021 extended the work of the council by one year (until June 30, 2022) and required the council to submit a supplemental report to the Governor and the General Assembly by October 1, 2021. During the 2021 interim, the council focused its work on the issue of juveniles charged as adults.

Policy Considerations

As part of its work during the 2021 interim, the council heard presentations on a growing body of scientific evidence indicating that juveniles have diminished neurocognitive capacity to be held culpable for their actions. Scientific studies have demonstrated that it takes longer – up to age 25 – for the cortical region, which is involved in cognitive control and self-regulation, to fully develop. Additionally, juveniles have been shown to have little ability to understand charges against them, their rights in an adversarial system, or the role of adults in the system. Presenters also noted studies that demonstrated a higher likelihood of recidivism for juveniles sentenced as adults instead of as juveniles and spoke of the trauma inflicted on juveniles subject to the adult criminal system.

Available data also illustrates that charging juveniles as adults has a disparate racial impact in the State. For example, approximately 80% of the 7,800 juveniles charged as adults during 2013 through 2020 were Black. Furthermore, fiscal 2020 data from the Department of Juvenile Services indicates that of the juveniles charged as adults who were detained in juvenile facilities pending a reverse waiver decision, nearly 95% were juveniles of color, of which slightly over 78% were Black. Available data collected from the Administrative Office of the Courts also indicated that from 2017 through 2019 Black youth accounted for 94% of juveniles charged as adults in the Circuit Court for Baltimore City.

Proponents of direct charging contend that direct charging is generally limited to offenses in which serious physical harm is committed or those that carry the risk of such harm. They argue that the very nature of the crime committed demonstrates adult capacity and the threat posed to public safety by such perpetrators necessitates direct charging of the juveniles as adults. Furthermore, even though charges may originate in criminal court, judges are still able to consider sending eligible cases to the juvenile court system through the reverse waiver process. Conversely, advocates proposing to eliminate direct charging note that requiring juvenile cases to originate in the juvenile court does not eliminate judicial authority to waive appropriate cases from the juvenile court to the adult system.

Other States

The council also reviewed legislative changes in other states. According to information from the Council on Criminal Justice, the Sentencing Project, and the Vera Institute, 26 states have made statutory changes in order to reduce the number of juveniles in adult court. For example, California and Oregon require all cases involving individuals younger than age 18 to begin in juvenile court. Kansas and New Jersey have both repealed presumptive waiver provisions that automatically moved cases to adult court. Instead, there is a rebuttable presumption for juvenile court jurisdiction, and prosecutors seeking a waiver to adult court must include a written statement including facts used in assessing the waiver factors and an explanation of how the facts support the waiver. Florida now requires a due process hearing, which acts as a "second opinion" on the prosecutor's decision to file the case in adult court. Other states have altered statutory exclusions that formerly limited some cases from being handled in the juvenile courts. For example, Utah and Washington narrowed their lists of offenses that must begin in adult court. Delaware eliminated mandatory prosecution as an adult for juveniles charged with certain offenses, including possession of a deadly weapon in the commission of specified felonies, and instead allows judges the discretion to direct such cases to the court handling juvenile matters.

Recommendation of the Juvenile Justice Reform Council

In its October 2021 supplemental report, the Juvenile Justice Reform Council voted to recommend that the State end the automatic charging of juveniles as adults and instead require that all court proceedings against individuals younger than age 18 be initiated in the juvenile court system.

For further information contact: Jennifer.Young@mlis.state.md.us

Criminal Law

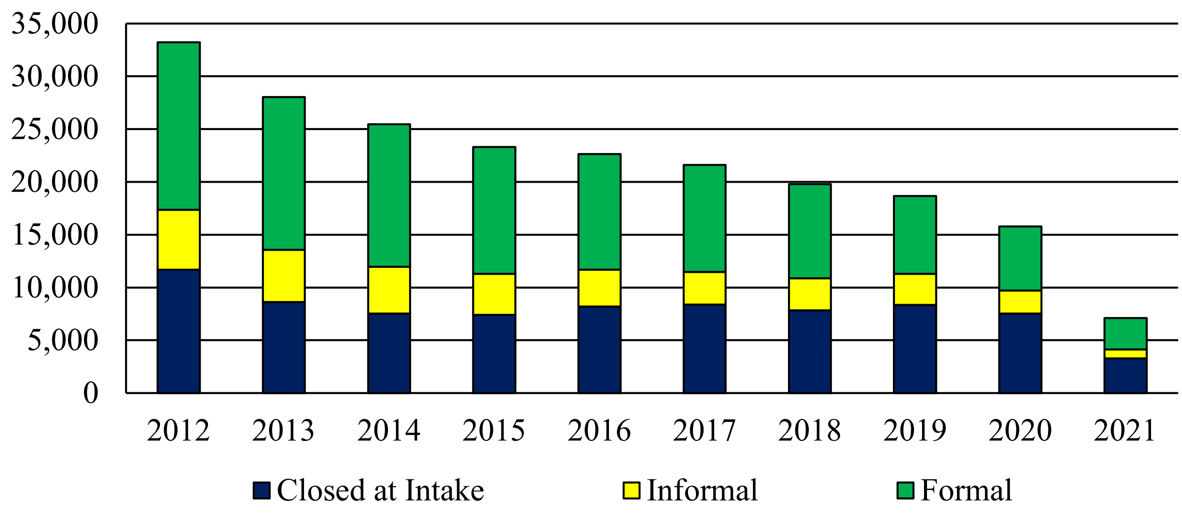
Department of Juvenile Services Update

Virtual schooling and efforts by the courts to limit out-of-home placements due to the COVID-19 pandemic have contributed to significant reductions across all caseloads and populations within the juvenile services system. Despite the population declines, the average length of stay increased for nearly all youth.

Complaints and Referrals Decline Sharply

The Department of Juvenile Services (DJS) received 7,123 complaints and referrals in fiscal 2021. **Exhibit 1** reflects the 52.3% decrease from fiscal 2020, likely due to the use of virtual and hybrid instruction in primary and secondary schools during the 2020-2021 academic year. Referrals dropped by 47.4% between March and April 2020 and have remained at approximately half the average number of prepandemic monthly referrals. Assuming school systems can continue operating in an in-person capacity, fiscal 2022 could see an increase in complaints.

Exhibit 1
Department of Juvenile Services Complaints by Disposition
Fiscal 2012-2021

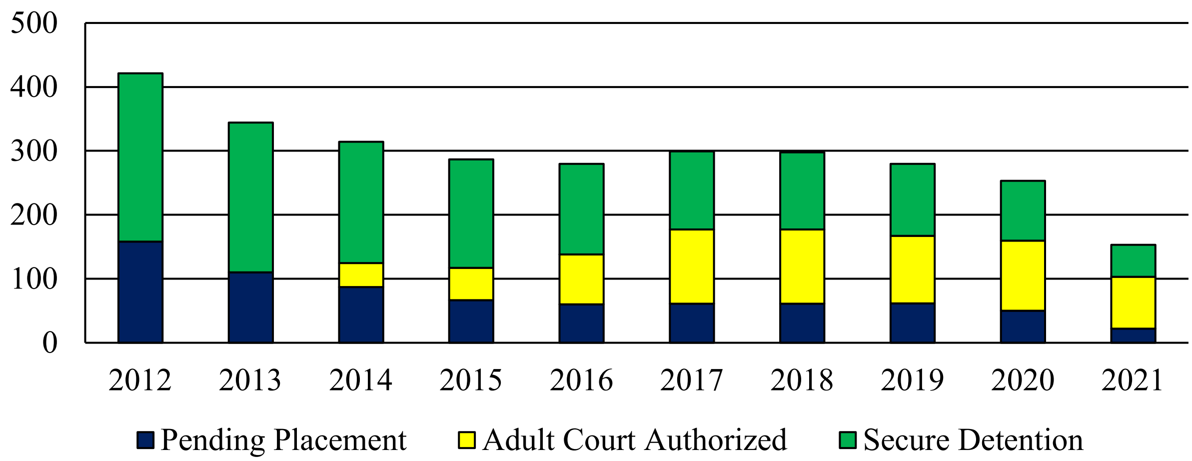


Source: Department of Juvenile Services

Diversion Efforts Continue to Reduce Detained and Committed Populations

The detained average daily population (ADP) consists of three populations: (1) secure detention (*i.e.*, youth awaiting juvenile court disposition); (2) pending placement (*i.e.*, youth awaiting placement in a committed facility after juvenile court disposition); and (3) adult court authorized (*i.e.*, youth charged as adults pending a transfer determination to the juvenile court). As shown in **Exhibit 2**, the detained ADP was 153 youth in fiscal 2021, which is a 39.6% decrease from fiscal 2020.

Exhibit 2
Department of Juvenile Services Average Daily Detained Population
Fiscal 2012-2021

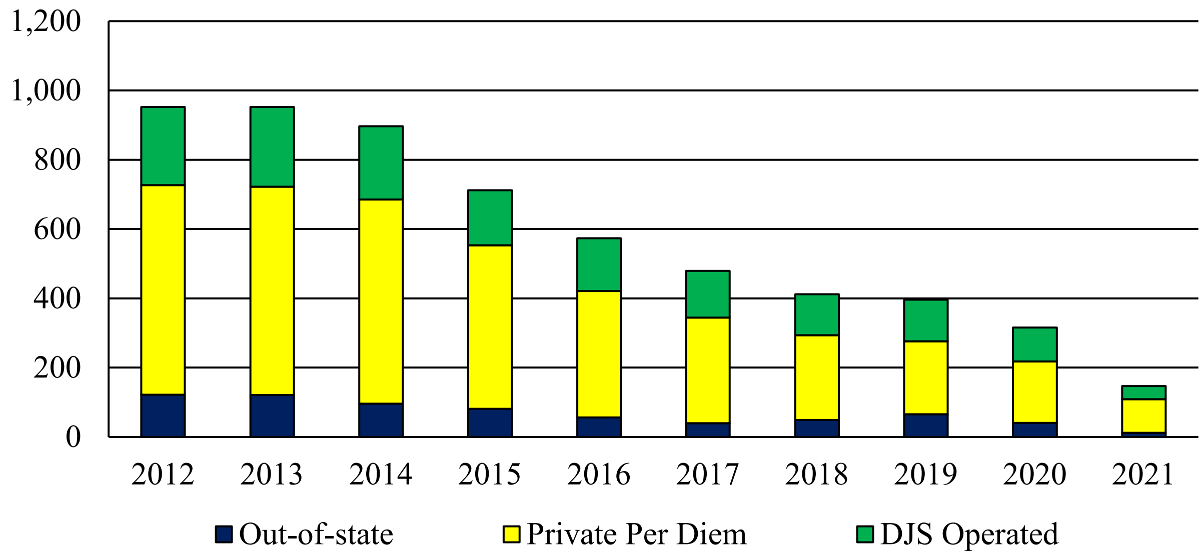


Source: Department of Juvenile Services

Compared to fiscal 2020, the fiscal 2021 pending placement, adult court authorized, and secure detention populations decreased by 56.1%, 26.0%, and 46.6%, respectively. The significant reductions, particularly for pending placement and secure detention, appear to be a response to Chief Judge Mary Ellen Barbera's order, issued on April 13, 2020, directing local courts to find alternatives to detaining juveniles in facilities to minimize risks of contracting COVID-19.

As shown in **Exhibit 3**, the committed population continues to be significantly lower than prepandemic levels. The fiscal 2021 committed population ADP was 147 youth, which is down 53.3% from fiscal 2020; this decline began during the final quarter of fiscal 2020. Most notably, enhanced efforts to treat youth with in-state services contributed to the out-of-state ADP falling to 12 youth in fiscal 2021, which is a 70% reduction from the year prior.

Exhibit 3
Department of Juvenile Services Average Daily Committed Population
Fiscal 2012-2021



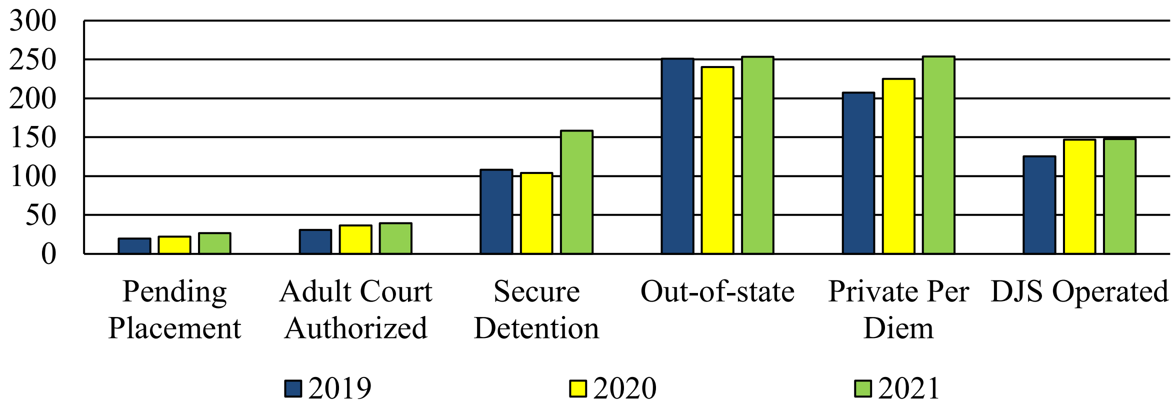
DJS: Department of Juvenile Services

Source: Department of Juvenile Services

Average Length of Stay Increased during the Pandemic

Although the ADP decreased across all populations in fiscal 2021, the average length of stay (ALOS) for pre- and post-disposition youth increased. Most notably, ALOS for the secure detention population grew 51.9% from 104.2 days in fiscal 2020 to 158.3 days in fiscal 2021, as shown in **Exhibit 4**. This increase could be explained by multiple factors. Court processing delays due to the pandemic may have kept youth detained for longer periods. Additionally, the proportion of youth detained by DJS for more serious offenses grew in fiscal 2021, while the proportion of those charged with a misdemeanor fell. Youth charged with misdemeanors are more likely to be released by the court to community detention alternatives.

Exhibit 4
Department of Juvenile Services Average Length of Stay
Fiscal 2019-2021



Source: Department of Juvenile Services

Operational and Fiscal Impacts of COVID-19

Many of the operational changes that DJS implemented in response to the COVID-19 pandemic are still in effect. For example, DJS has continued its use of community detention as a diversion from residential placements. In addition, the department employs electronic monitoring and video conferencing platforms to maintain its community detention and community supervision operations. Within facilities, youth are managed in smaller groups with dedicated dormitory and bathroom facilities. DJS reports that, as of October 12, 2021, 60% of facility staff – which includes DJS permanent and contractual staff, contracted vendors, volunteers, and all individuals who have regular contact or perform any regular duties at a DJS facility – have received at least one COVID-19 vaccine dose.

Educational Services Shift Back to DJS

Effective July 1, 2022, Chapter 147 of 2021 transfers the provision of education for juveniles in detention and DJS committed facilities from the Maryland State Department of Education (MSDE) to an independent Juvenile Services Education (JSE) Board within DJS. This change is expected to increase the DJS budget by approximately $22.6 million. Chapter 147, among other things, specifically requires that the board appoint a JSE Superintendent and provides that DJS and the board are jointly responsible for implementing JSE programs in the State. Annual reporting of educational outcome measures by facility is required beginning in December 2022. In addition, a report to the General Assembly on plans for the required transition of JSE programs is anticipated from MSDE and DJS by December 1, 2021.

Courts and Civil Proceedings

Evictions

Widespread concern over a housing crisis and a potential large increase in evictions due to the COVID–19 pandemic prompted the federal government as well as many states and local jurisdictions to implement interventions, such as eviction moratoriums, rental assistance programs, and increased legal representation for tenants facing eviction. While eviction moratoriums established during the pandemic are no longer in effect, recent statistics do not show a surge in evictions and related filings in Maryland. Chapter 746 of 2021 established the Access to Counsel in Evictions Program to provide income-eligible tenants in the State with access to legal representation in judicial or administrative proceedings to evict or to terminate a tenancy or housing subsidy.

End of Eviction Moratoriums

In response to the health and economic consequences of the COVID-19 pandemic, the federal government as well as many states and local jurisdictions established eviction moratoriums. Loss of income due to the pandemic was a threat to housing stability, and the ability to maintain stable housing greatly impacts an individual's ability to comply with recommendations from health experts to prevent the spread of COVID-19, such as quarantines, isolation, and social distancing. Thus, the moratoriums were designed to maintain housing stability and slow the spread of COVID-19 by preventing homelessness and overcrowded housing.

The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act eviction moratorium, which began on March 27, 2020, imposed a 120-day moratorium on the filing of failure to pay rent actions with regard to covered property, which included public housing, federally subsidized housing, and residential property that is subject to a federally backed mortgage. The CARES Act moratorium ended on July 24, 2020, but protected tenants from being evicted for an additional 30 days.

Effective September 4, 2020, the Centers for Disease Control and Prevention (CDC) imposed a broader temporary nationwide moratorium on residential evictions for nonpayment of rent. The order allowed a tenant to temporarily avoid eviction for failure to pay rent if the tenant was able to successfully assert an affirmative defense regarding the tenant's income, the tenant's efforts to obtain government assistance for rent and make timely partial payments of rent, and the risk of the tenant being homeless or living in overcrowded housing if evicted. The order remained in effect through July 31, 2021. On August 3, 2021, the CDC issued a new temporary moratorium on residential evictions. The order was narrower than the previous CDC order in that it only applied to evictions in areas experiencing substantial or high transmission of COVID-19. On August 26, 2021, the U.S. Supreme Court struck down the order by upholding a lower court's finding that the order was unconstitutional. According to the court, the order exceeded the CDC's authority and additional federal eviction moratoriums must be authorized by the U.S. Congress.

On March 16, 2020, Governor Lawrence J. Hogan, Jr. signed an executive order temporarily prohibiting evictions of tenants suffering substantial loss of income due to COVID-19 or the state of emergency. The order was amended and extended several times throughout the pandemic, but eventually terminated on August 15, 2021. The Governor's order applied to failure to pay rent and breach of lease actions and, like the CDC order, allowed a tenant to temporarily avoid eviction by successfully asserting an affirmative defense.

The affirmative defenses under the CDC's and the Governor's orders are no longer available due to the termination of those orders. If a tenant successfully asserted an affirmative defense, the District Court reserved entry of judgment in the case for the duration of the orders. The District Court will enter judgments in these cases, mail a copy of the judgment for possession to all parties to the action, and set hearings on associated warrants of restitution within 21 days. In July 2021, the District Court advised that it expected to issue approximately 5,500 reserved judgments under the orders.

Court Statistics on Evictions

In general, a landlord seeking to evict a tenant for failure to pay rent must proceed through multiple steps – filing a failure to pay rent case after properly notifying the tenant, securing a court judgment for possession of the property, filing for and securing a warrant of restitution from the court after a specified waiting period, and enforcement of the eviction by the sheriff or constable. According to the District Court, a filing for failure to pay rent often does not proceed to the subsequent steps in the process due to changes in circumstances (*e.g.*, the tenant paid the rent or moved). While the moratoriums mainly applied to failure to pay rent cases, and these cases represent the overwhelming majority of housing cases, landlords can evict tenants for other reasons, such as overstaying the lease (tenant holding over) and breach of lease.

While the District Court is hearing all landlord-tenant cases, including failure to pay rent cases, current COVID-19 health protocols have reduced court capacity and landlord-tenant case dockets. This has reduced the pace at which the District Court is processing landlord-tenant cases, and larger jurisdictions are experiencing case backlogs.

As of September 1, 2021, there has not been a wave of evictions in Maryland. In August 2021, there were 32,978 failure to pay rent filings, compared to 56,270 filings in August 2019. There has also been a significant decrease in warrant of restitution filings. In August 2021, there were 4,155 warrant of restitution filings, compared to 20,028 filings in August 2019. As noted above, these filings are the required preliminary legal steps to an eviction. While the most recent available data is for August 2021 (when moratoriums/orders were still in effect), the District Court reports similar declines in evictions (793 in August 2021 compared to 2,150 in August 2019).

These decreases in filings and the absence of a surge in eviction cases may in part be attributed to rental assistance programs. The Department of Housing and Community Development reports that Maryland received $401 million and $352 million during the first and second rounds of funding issued by the federal Emergency Rental Assistance Program (ERAP), respectively. State and local distribution of the funds is ongoing. Prior to ERAP, the State and local jurisdictions used CARES Act funds for rental assistance programs. For further discussion of rental assistance funding, see "Status of Rental Relief Programs" within the Business Regulation section of this *Issue Papers of the 2022 Session*.

Access to Counsel in Eviction Proceedings

The potential for a housing crisis during the COVID-19 pandemic also generated discussion of access to legal counsel for tenants facing eviction proceedings. Statewide access to counsel for tenants in these cases was the subject of legislation during the 2021 legislative session.

Chapter 746 of 2021 establishes, subject to the availability of funding, access to legal representation for tenants meeting specified income qualifications in judicial or administrative proceedings to evict or to terminate a tenancy or housing subsidy. To facilitate this access, Chapter 746 establishes the Access to Counsel in Evictions Program, to be administered by the Maryland Legal Services Corporation (MLSC). MLSC is a statutorily created entity that provides funding for legal services in civil proceedings for persons with limited incomes. The Act authorizes MLSC to contract with designated organizations (nonprofit entities) to provide all or part of the services required under the Act. MLSC must also designate and contract with appropriate community groups to conduct outreach and provide education to tenants regarding tenants' rights and the access to legal representation.

Chapter 746 also established the Access to Counsel in Evictions Special Fund for the purpose of providing funding to fully implement access to legal representation in evictions and other related proceedings in the State. Access to legal representation must be phased in over time as MLSC determines appropriate, with the goal of full implementation before October 1, 2025. Chapter 746 did not include a funding mechanism for this legal representation, and the special fund established under the Act has not been capitalized. MLSC estimates the following funding levels for phased-in implementation of the program: $5 million to $7 million in fiscal 2022; $12 million to $14 million in fiscal 2023; $20 million to $22 million in fiscal 2024; and $29 million to $31 million in fiscal 2025.

Chapter 746 also established the Access to Counsel in Evictions Task Force. The task force must (1) evaluate the provision of services provided under Chapter 746, including the performance of designated organizations and community groups; (2) study potential funding sources; and (3) make recommendations to improve implementation of the provisions in the Act, including necessary policy and statutory changes. The task force's initial annual report of its findings and recommendations is due January 1, 2022.

For further information contact: Hillary.Cleckler@mlis.state.md.us/Caleb.Weiss@mlis.state.md.us

Courts and Civil Proceedings

Statute of Limitations in Civil Cases Related to Child Sexual Abuse

The disclosure of child sexual abuse is often delayed until victims are older. States continue to consider how to balance the rights of child sexual abuse victims to obtain justice with the policy of encouraging timely and accurate resolutions of lawsuits.

Background and Maryland Law

Many victims of child sexual abuse delay disclosing their abuse, in part due to the psychological trauma caused by the abuse. The applicable civil statute of limitations has often expired by the time a victim discloses the abuse, which prevents victims from seeking legal redress against their abusers through civil lawsuits. In response to the growing recognition of this delayed disclosure, states are reevaluating how to apply – and whether to apply – a statute of limitations to civil actions arising from an alleged incident of child sexual abuse. Almost every state and the District of Columbia have enacted laws that specifically address the statute of limitations for actions to recover damages stemming from this type of abuse. The approaches vary but commonly have involved the extension of the limitations period for a specified number of years, eliminating any time restrictions on filing certain actions, and/or the incorporation of a "discovery rule" by which the statute of limitations only begins to accrue once an individual discovers or should have discovered that sexual abuse occurred and caused the individual's injuries.

In general, a civil cause of action must be filed within three years from the date that it accrues unless another statutory provision provides a different period of time within which an action can be commenced. For a cause of action that applies to a minor, this three-year statute of limitations is tolled until the child reaches the age of majority (age 18). This general statute of limitations applied to civil cases involving child sexual abuse until 2003, when Chapter 360 of 2003 established that an action for damages arising out of an alleged incident or incidents of sexual abuse that occurred while the victim was a minor must be filed within seven years of the date that the victim attains the age of majority.

Chapters 12 and 656 of 2017 further expanded this statute of limitations and established the current applicable statute of limitations in Maryland. Currently, an action for damages arising from an alleged incident of child sexual abuse must be filed before the victim reaches the age of majority or within the later of (1) 20 years after the date on which the victim reaches the age of majority; or (2) 3 years after the date that the defendant is convicted of a crime related to the alleged incident under § 3-602 of the Criminal Law Article (sexual abuse of a minor) or the equivalent laws of another state or the United States. In an action brought more than 7 years after the victim reaches the age of majority, damages may be awarded against a person or governmental entity that is not the alleged perpetrator of the sexual abuse only if (1) the person or governmental entity owed a duty of care to the victim; (2) the person or governmental entity employed or exercised some degree of responsibility or control over the alleged perpetrator; and (3) there is a finding of gross negligence on the part of the person or governmental entity. However, none of the provisions may apply retroactively to revive any action that was barred by the period of limitations applicable prior to October 1, 2017.

Furthermore, statute establishes that "[i]n no event" may an action for damages arising out of an alleged incident of child sexual abuse be filed against a person or governmental entity that is not the alleged perpetrator more than 20 years after the date on which the victim reaches the age of majority. Section 3 of the 2017 Acts refers to this provision as a "statute of repose" and states that it must apply both prospectively and retroactively to provide repose to defendants for actions that were barred by the period of limitations applicable before October 1, 2017.

Recent Legislative Activity and Policy Considerations

The General Assembly has continued to revisit this issue following the statutory changes enacted in 2017. House Bill 263 and Senate Bill 134 of 2021, the most recently introduced legislation, would have repealed the current law as specified above and instead authorized an action for damages arising out of an alleged incident of child sexual abuse to be filed at any time. Also, the proposed bills would have applied a two-year "lookback window" that would have allowed any action that was barred prior to the effective date to proceed, as long as the action was filed within the two-year period.

Proponents argue that the legislation would provide child sexual abuse victims with meaningful and necessary access to the civil justice system. Proponents offered numerous examples of the long-lasting effects of abuse, including many that necessitate medical treatment and/or counseling, and argued that it is unfair for the victim to bear the costs of such harm. Abusers often occupy a position of trust and power, and many children lack the stability and emotional support necessary to confront their attackers until they are much older. Advocates contend that given how common delayed disclosure is in these cases, it is appropriate to treat them in a manner unique from typical civil cases subject to stricter statutes of limitations. Although there is no statute of limitations for the prosecution of child sexual abuse cases, advocates note that the higher burden of proof in criminal cases can limit the cases that are prosecuted, and even for those that are, criminal restitution generally only provides partial relief. In addition to providing individual victims with an avenue to seek justice, advocates argue that the legislation can help protect children from individuals who have never been previously identified as abusers and faced legal consequences, as well as shed light on the practices of entities that may have endangered children.

Opponents point to the policy considerations behind statutes of limitations in general, noting that they are critical in ensuring that civil lawsuits are resolved promptly and accurately. Statutes of limitations are argued to be a core factor in a fair civil justice system by allowing triers of fact to decide cases before the lapse of time erodes the ability of litigants to gather critical evidence and procure necessary witnesses when recollections are still fresh. If the statute of limitations is eliminated, opponents argue, some claims filed may be so old that it would be extremely difficult for defendants to conduct a proper investigation and defense, as documentation may no longer exist, and witnesses may no longer be available. In addition to monetary damages and litigation expenses associated with specific claims, the increased exposure to liability in general for these types of cases could also have meaningful fiscal implications for an array of potential defendants, including not only perpetrators of abuse but also nonprofits and even governmental entities.

Amending current law in the above manner to allow previously barred claims to proceed also presents potential constitutional issues. The retroactive elimination of the general statute of limitations and, in particular, retroactive repeal of the "statute of repose" may be found to interfere with defendants' vested rights and violate due process requirements of the Maryland Constitution.

Other States

As noted above, states continue to reevaluate the issue of appropriate time limitations for filing civil actions based on child sexual abuse. Statutes in some states permit at least some types of civil actions based on child sexual abuse claims to be filed at any time. For example, in Alaska, a civil action based on conduct that would constitute specified offenses, including felony sexual abuse of a minor, may be commenced at any time; civil actions based on other types of related conduct are subject to more stringent statutes of limitations. Nebraska distinguishes between whether the defendant was the individual who directly caused the injuries versus another individual or entity. However, not all of these statutes apply retroactively. In Florida, although actions related to an act of sexual battery involving a victim younger than age 16 may commence at any time, the statute is only applicable to actions *other than* those that would have been time barred on or before July 1, 2010.

Changes to relevant laws in numerous states, including Arizona, California, Delaware, Georgia, Hawaii, Michigan, Montana, New Jersey, and New York, also authorized the temporary revival of previously time-barred actions (lookback windows). For instance, New York's lookback window, which was extended from one year to two years due to COVID-19 court closures, closed on August 14, 2021. According to news reports, nearly 11,000 lawsuits were filed during that time, which was significantly more than the number of lawsuits filed during lookback windows in other states.

For further information contact: Heather.Marchione@mlis.state.md.us

Environment and Natural Resources

The Status of Chesapeake Bay Restoration

Maryland's Phase III Watershed Implementation Plan anticipates that the State will achieve statewide nutrient and sediment pollution reduction goals by calendar 2025. However, pollution loading resulting from climate change, population growth, and the Conowingo Dam may impact the achievement and sustainability of restoration beyond calendar 2025. Although activities under the Chesapeake Bay Program are expected to be fully funded, the extent to which the U.S. Environmental Protection Agency will provide regulatory oversight and enforcement to ensure that the bay states will achieve and maintain the required nutrient reductions is unknown.

Chesapeake Bay Total Maximum Daily Load

In December 2010, the U.S. Environmental Protection Agency (EPA) established a Chesapeake Bay Total Maximum Daily Load (TMDL), as required under the federal Clean Water Act and in response to consent decrees in the District of Columbia and Virginia. This TMDL sets the maximum amount of nutrient (phosphorus and nitrogen) and sediment pollution that the bay can receive and still meet water quality standards. It also identifies specific pollution reduction requirements. Measures to meet a pollution reduction of at least 60% were required to be in place by calendar 2017, and all reduction measures must be in place by calendar 2025.

Phase III Watershed Implementation Plan

As part of the TMDL, bay jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) must develop watershed implementation plans (WIP) that identify the measures being put in place to reduce pollution and restore the bay. Specifically, WIPs (1) identify pollution load reductions to be achieved by various source sectors and in different geographic areas and (2) help to provide "reasonable assurance" that sources of pollution will be cleaned up. WIPs must be submitted to EPA for review and evaluation. Each bay jurisdiction submitted (1) a Phase I WIP in calendar 2010 detailing how the jurisdiction plans to achieve its pollution reduction goals under the TMDL; (2) a Phase II WIP in calendar 2012 establishing more detailed strategies to achieve the TMDL on a geographically smaller scale; and (3) a Phase III WIP in August 2019 ensuring that all measures to meet restoration goals are in place by calendar 2025.

Achieving the Goal: Progress and What Lies Ahead

In the July 2018 midpoint assessment, EPA concluded that the bay jurisdictions exceeded the 60% goal for reducing phosphorus and sediment but did not achieve the goal for reducing nitrogen. To achieve the necessary reductions by calendar 2025, the bay jurisdictions must reduce an additional 48.4 million pounds of nitrogen, which is more than twice the reductions achieved by the bay jurisdictions between calendar 2009 and 2017. Pennsylvania and Maryland are responsible for most of the remaining nitrogen reductions (70.6% and 17.4%, respectively). Pennsylvania is responsible for reducing an additional 34.1 million pounds of nitrogen, or 6.3 times its reductions, between calendar 2009 and 2017, and Maryland is responsible for reducing an additional 8.4 million pounds of nitrogen, or 2.5 times its reductions, between calendar 2009 and 2017.

Maryland's Phase III WIP anticipates that the State will achieve (and possibly exceed) statewide nutrient and sediment pollution reduction goals by calendar 2025. Maryland's strategy relies on accelerated pollution load reductions from both the wastewater and agricultural sectors to achieve most of the necessary reductions. Although the State anticipates meeting its 2025 pollution reduction goals, concerns have been raised regarding whether Maryland is fully on track to meet its future restoration goals. Among those concerns are (1) whether Maryland's Phase III WIP includes sufficient detail regarding the actions that must be taken to achieve pollution reduction goals; (2) the feasibility of continued reliance on the wastewater sector to meet pollution reduction goals when other sectors fall short; and (3) whether adequate resources to implement necessary agricultural practices are available. In addition, Maryland's Phase III WIP acknowledges that pollution loading resulting from climate change, population growth, and the Conowingo Dam may impact the achievement and sustainability of restoration beyond calendar 2025. Most recently, in its July 29, 2020 evaluation of Maryland's 2018-2019 completed and 2020-2021 projected milestones, EPA notes that Maryland did not achieve its 2019 targets for nitrogen and phosphorus but did achieve its target for sediment.

Funding for Bay Restoration

Chesapeake Bay Program Funding

The Chesapeake Bay Program directs bay restoration and operates as a partnership between federal and state agencies, local governments, nonprofit organizations, and academic institutions. In October 2020, the U.S. Congress passed America's Conservation Enhancement Act, which reauthorizes the program for another five years and provides up to $92.0 million annually by federal fiscal 2025 to fully fund bay water quality monitoring and coordination activities between the bay jurisdictions. In accordance with the Act, the federal fiscal 2022 budget request increases program funding to $90.5 million, a $3 million increase from the prior fiscal year. On July 29, 2021, the House of Representatives passed an appropriations bill to increase the funding for the program to $90.5 million. Although this bill has not yet been voted on by the Senate, on October 18, 2021, the Senate Appropriations Committee released a spending bill that also includes $90.5 million for the program.

The U.S. Congress passed the Infrastructure Investment and Jobs Act on November 5, 2021. In addition to providing funding for an array of infrastructure investments, the bill increases funding for the Program by $238 million over the next five years (an additional $47.6 million a year). For more information on the Infrastructure Investment and Jobs Act, see “Federal Infrastructure Investment and Jobs Act” within the Transportation section of this *Issue Papers of the 2022 Session*.

On October 7, 2021, U.S. senators from Delaware, Maryland, Pennsylvania, and Virginia, sent a letter to Senator Debbie Stabenow, Chair of the Senate Committee on Agriculture, Nutrition, and Forestry, requesting $750.0 million in upcoming budget reconciliation legislation for natural resources conservation programs in the bay watershed. This funding, allocated from up to four programs within the U.S. Department of Agriculture, would be used for conservation practices that reduce nitrogen loads going into the bay and mitigate the impacts of climate change. This money is separate from the $238.0 million in funding for bay restoration under the Infrastructure Investment and Jobs Act. As of November 2, 2021, as much as $737.0 million of the funding requested was expected to be included in the reconciliation package.

Public-Private Conservation Financing

On October 1, 2021, in a letter to the Presiding Officers of the General Assembly, Governor Lawrence J. Hogan, Jr. set forth the Administration’s environmental priorities for the 2022 session, which include passing legislation to create a public-private financing mechanism for certain conservation projects. In the letter, the Governor references legislation proposed in 2021 (Comprehensive Conservation Finance Act/Senate Bill 737 of 2021) that would have altered a broad variety of existing programs related to environmental conservation and natural resources management and included provisions to promote (1) private investment for State environmental projects and markets and (2) pay-for-performance procurement for environmental and conservation projects, including the installation and repair of green and blue infrastructure. According to the Governor, these procurement reforms and market-based strategies will facilitate investment in green and blue infrastructure that is necessary to achieve bay restoration goals.

Conowingo Dam

The Conowingo Dam, a peaking hydroelectric facility that uses reservoir storage to generate electricity during peak electricity demand periods, has been described as the best management practice (BMP) on the Susquehanna River because it collects sediment and associated nutrients that would otherwise flow into the bay. However, the dam, owned by Exelon Corporation, has reached an end state in terms of sediment storage capacity. The dam officially has its own reduction target of 6.0 million pounds of nitrogen and 260,000 pounds of phosphorus under a separate WIP managed by a trio of third parties contracted for this purpose: the Center for Watershed Protection; the Chesapeake Bay Trust; and the Chesapeake Conservancy.

In its May 8, 2021 evaluation of the draft Conowingo WIP (CWIP), EPA expressed concerns about distinguishing restoration activities under the draft CWIP from activities that are already pledged under the bay jurisdiction's Phase III WIPs. In addition, EPA noted the need for dedicated funding mechanisms and public-sector financial commitments to fully implement the draft CWIP. The final CWIP was completed on July 31, 2021, and submitted to EPA in September 2021 for review and evaluation. The final CWIP reflects an over-the-target reduction of 6.75 million pounds of nitrogen per year. The total annualized cost of nitrogen reduction is still to be determined but ranges from $53.3 million to $253.0 million per year. The CWIP is the first of three activities to be addressed by the third-party contractors and reflects the recommended BMP implementation strategy. The two remaining activities to be addressed by the third-party contractors include the development and implementation of (1) a financing strategy (Phase I of the financing strategy was completed on July 1, 2021) and (2) a system for tracking, verifying, and reporting BMP implementation.

In addition, the Federal Energy Regulatory Commission (FERC) recently approved the relicensing of the dam. Exelon initiated the relicensing proceedings in 2009 before the 2014 expiration of the prior license. The dam received automatic 1-year renewals until relicensing was approved; FERC could not act on the relicensing application until the Maryland Department of the Environment (MDE) issued a Clean Water Act Section 401 water quality certification. On April 27, 2018, MDE issued the water quality certification with special conditions, which led Exelon to file an administrative appeal with MDE and lawsuits in federal and State court. Ultimately, on October 29, 2019, the State announced a settlement agreement between MDE and Exelon that requires Exelon to invest more than $200 million in environmental projects and operational enhancements to improve water quality over the 50-year license term. FERC approved the settlement and issued a new license to Exelon for the Conowingo Dam on March 18, 2021. Although the settlement and FERC's issuance of the new license resolved the litigation against MDE, there are ongoing challenges regarding the water quality certification and relicensing of the dam. On June 17, 2021, environmental advocacy groups filed a petition for review in federal court to challenge FERC's issuance of the new license and, on July 19, 2021, the Maryland Attorney General filed a motion to intervene on the petition for review.

Lawsuits Filed Against EPA

On September 10, 2020, the Attorneys General from Delaware, Maryland, Virginia, and Washington, DC filed a lawsuit against EPA in the U.S. District Court for the District of Columbia. The lawsuit seeks to compel EPA to comply with its nondiscretionary duty under the Clean Water Act to ensure that each signatory state to the Chesapeake Bay Agreement develops and implements management plans (the Phase III WIPs) that achieve and maintain the nutrient reduction goals in the agreement. Pennsylvania and New York are singled out for having inadequate Phase III WIPs, tacitly approved by EPA, that will achieve only 75.0% and 66.0% of the required nitrogen reductions, respectively (although New York has since submitted to EPA an amended WIP that, if fully implemented, meets its obligations). The lawsuit further states that EPA's failure to ensure the development of adequate plans jeopardizes the success of overall Chesapeake Bay restoration, since the Phase III WIP process is the final period in which a statutory or regulatory mechanism is available to ensure that the bay states will achieve and maintain those reductions. A similar lawsuit was filed on September 10, 2020, by the Chesapeake Bay Foundation, Inc., Maryland Watermen's

Association, Inc., Anne Arundel County, and two Virginia farmers. These cases have been consolidated and remain in litigation.

Policy Implications

Several challenges lie ahead for Maryland and the other bay jurisdictions, including the need to accelerate the reduction of nitrogen loads. The monitoring and coordination activities under the Chesapeake Bay Program are expected to be fully funded, but the extent to which EPA will provide regulatory oversight and enforcement to ensure that bay jurisdictions will achieve and maintain the required nutrient reductions is unknown. While Maryland's Phase III WIP indicates that the State will make necessary nutrient and sediment pollution load reductions by calendar 2025, the State still faces several challenges, including the availability of adequate resources to implement the WIP and address pollution loads resulting from climate change, population growth, and the Conowingo Dam.

For more information contact: Cristen.Flynn@mlis.state.md.us

Environment and Natural Resources

Climate Change Mitigation and Adaptation

Efforts to mitigate climate change and adapt to its effects continue at the international, federal, and State level. One of the biggest challenges for effective climate policy is financing adaptation and mitigation measures. There are various financing options available with respect to these options.

Climate Change

Climate change affects the environment, agriculture, energy production and use, land and water resources, transportation, and human health and welfare across the globe. Since 1981, Earth's temperature has risen by an average of 32 degrees Fahrenheit each decade and, according to the National Oceanic and Atmospheric Administration, 2020 was the second warmest year on record. Humans are increasingly affecting the earth's climate by burning fossil fuels, cutting down forests, and farming livestock, all of which increase the amount of greenhouse gases emitted into the atmosphere. In 2020, emissions of carbon dioxide, one of the most prevalent greenhouse gases, decreased by approximately 7% due to travel bans and economic slowdowns resulting from the COVID-19 pandemic. However, emissions of carbon dioxide and other greenhouse gasses are expected to reach unprecedented levels as the global economy recovers from the pandemic.

International Activity – United Nations Climate Change Conference

For nearly three decades the United Nations (UN) has hosted global climate summits known as Conference of the Parties (COP). During COP 21 in 2015, the Paris Agreement was formed, establishing the goal of limiting global warming to 1.5 degrees Celsius compared to pre-industrial levels. Nearly 200 nations are expected to attend COP 26, which was rescheduled for November 2021 due to the COVID-19 pandemic. The objective of COP 26 is to work together to significantly cut greenhouse gas emissions and slow the Earth's warming through four stated goals: (1) securing global net zero carbon emissions by mid-century and keeping the 1.5 degrees Celsius warming limit within reach; (2) adapting to protect communities and natural habitats; (3) mobilizing finance; and (4) working together to deliver on the three previous goals.

Federal Activity

Rejoining the Paris Agreement

In 2019, the President Donald J. Trump Administration formally notified the UN of its intention to withdraw from the Paris Agreement after a mandatory one-year waiting period. After the 2020 election, the President Joseph R. Biden, Jr. Administration reversed course by signing an executive order binding the United States to the agreement once again. Rejoining the Paris Agreement signals a shift in the U.S. objectives for reducing greenhouse gases and managing climate change.

The Paris Agreement holds countries accountable by requiring each country to update its greenhouse gas emission reduction targets, known as nationally determined contributions (NDC), every five years to reflect its highest possible ambition. However, the UN Framework Convention on Climate Change released a preliminary report demonstrating that the current aim of limiting NDCs to 1.5 degrees Celsius will not be attained. In anticipation of COP 26, President Biden convened 40 world leaders in a virtual Leaders Summit on Climate in April 2021 where it was announced that the United States will update its NDCs to target reducing greenhouse gas emissions by 505 to 52% by 2030 as compared to 2005 levels.

Domestic Legislation

Early in his Administration, President Biden announced the Build Back Better Agenda. The agenda aims to address climate change by (1) creating “good-paying, union jobs” in clean energy; (2) establishing an energy efficiency and clean energy standard; (3) expanding and extending clean energy and electric vehicle tax credits; and (4) enlisting a new Civilian Climate Corps. The Infrastructure Investment Jobs Act (Infrastructure Act), which passed the U.S. Congress on November 5, 2021, is an integral part of this agenda. The Infrastructure Act includes more than $18 billion in funding for climate-related initiatives, including (1) reducing transportation emissions through investments in public transit; (2) making surface transportation infrastructure more resilient to the effects of extreme weather and natural disasters; (3) developing electric vehicle infrastructure; (4) reducing port truck emissions; and (5) mitigating urban heat islands, improving air quality, and reducing storm water runoff through a healthy streets program.

One objective of the Infrastructure Act is to make America’s infrastructure more resilient to severe floods, wildfires, hurricanes, and other risks exacerbated by climate change. In 2020, the American Society of Civil Engineers gave Maryland a C grade on its infrastructure report card, citing a lack of infrastructure funding as a recurring problem. In the past 10 years, Maryland experienced 31 extreme weather events, costing the State roughly $10 billion in damages. The Infrastructure Act will provide funding for Maryland to repair and rebuild roads and bridges with a focus on climate change mitigation, resilience, equity, and safety for all users and build a network of electric vehicle chargers to facilitate long-distance travel. Under the Infrastructure Act’s funding formula, Maryland will receive approximately $4.1 billion for federal-aid highway and $63 million over five years to support the expansion of electric vehicle charging networks. For additional information on funding for State transportation projects under the Infrastructure Act, see "Federal Infrastructure Investment and Jobs Act" within the Transportation section of this *Issue Papers of the 2022 Session*.

State Activity

Maryland Commission on Climate Change

With over 7,000 miles of shoreline, Maryland is vulnerable to the effects of sea-level rise associated with climate change. To mitigate and adapt to those effects, Governor Martin J. O'Malley established the Maryland Commission on Climate Change (MCCC) by executive order in 2007. MCCC is a group of State agencies, experts, and other stakeholders charged with planning for the likely effects of climate change in Maryland, which it accomplishes by making recommendations through its four working groups.

In 2020, MCCC made recommendations on several climate-related topics, including transportation, energy efficiency in new and existing buildings, natural and working lands, and environmental justice. Specifically, MCCC's recommendations for the building sector included passing legislation to (1) encourage energy customers to switch from using fossil fuels to using electric energy in their homes; (2) expand the core objective of the EmPOWER Maryland Program, the State's energy efficiency and conservation program; (3) establish an incentive program for electric space heating and water heating in buildings; (4) require all new and major renovations to State-owned buildings to use efficient electric space and water heating; and (5) use various tools to ensure that the State will meet the goal that electric heat pump sales make up at least 50% of all space heater sales. MCCC's recommendations related to environmental and climate justice included working with other government entities and the public to identify communities vulnerable to climate change and study methods for ensuring the equitable distribution of assistance provided under climate change programs. MCCC also recommended studying the promotion of climate-friendly manufacturing in the State and the impacts of energy transition policies on both industry and communities.

Although MCCC's 2021 annual report was not published as of the date of this *Issue Papers of the 2022 Session*, MCCC meeting materials indicate that the report will likely include a comprehensive plan for achieving net-zero emissions in residential and commercial buildings and recommendations related to climate justice and ocean acidification.

Regional Greenhouse Gas Initiative

The Regional Greenhouse Gas Initiative (RGGI) is an agreement among participating states, including Maryland, to reduce carbon dioxide emissions from the power sector by using a cap-and-trade model. Since its inception, emissions from RGGI participants have decreased by more than 50% and auction proceeds have generated over $4 billion for local communities. RGGI is currently undergoing its third program review to reevaluate the carbon dioxide emissions cap and the elements of the program. The review will consider updated climate science, environmental policies in the participating states, equity and environmental justice, and data trends. At the time of this writing, the third review is in the early stages and the final review is scheduled to be completed and ready for implementation by January of 2023.

Chesapeake Bay Program Climate Directive

On October 1, 2021, the Chesapeake Executive Council, which includes the governors of six Chesapeake Bay watershed states, the mayor of the District of Columbia, the chair of the Chesapeake Bay Commission, and the administrator of the U.S. Environmental Protection Agency, signed a directive for the Chesapeake Bay Program to address the effects of climate change in all aspects of its work and to specifically focus on the most vulnerable communities and habitats.

Financing Climate Change Policy

The methods for financing climate change policy can have a meaningful impact on both the public and private sector, depending on the strategies and the parties responsible for implementing those strategies. Examples of the types of financing options available include:

- redirecting existing funds toward climate priorities;
- incentivizing actions to implement climate policy, such as providing tax incentives or grants;
- requiring certain actions in the private sector, including energy conservation requirements for privately owned buildings;
- taking advantage of available funding sources, such as federal funding, to implement policies; and
- using a market-based approach that would require any industry emitting carbon to pay a tax or purchase credits to account for its emissions.

The Department of Legislative Services expects to issue a more detailed report discussing potential funding for climate change mitigation later this fall.

For further information please contact: Emily.Wezik@mlis.state.md.us

Environment and Natural Resources

State Parks

In 2020, Maryland's State park system received a record-setting 21.5 million visitors. In the same year, there were 292 closures due to capacity limits in 11 parks across the State. In 2021, the Presiding Officers created the State Park Investment Commission, which is considering six main challenges affecting the State park system, including (1) capacity; (2) maintenance; (3) staffing; (4) funding; (5) equity; and (6) climate change. Legislative and budget actions will be needed to address the pressures on the State park system, and while one-time federal funding may play a crucial role in the short term, additional State investment will be necessary in the long term.

Background

The Maryland State park system experienced a significant increase in visitation during the COVID-19 pandemic, leading to capacity shutdowns at a number of State park areas which also highlighted park access inequities. As a result, on August 6, 2021, the Presiding Officers of the General Assembly announced the creation of the State Park Investment Commission to study the needs of and make future recommendations regarding the State park system across Maryland. Specifically, the commission was charged with investigating and making recommendations regarding overcrowding in Maryland State parks, including (1) the adequacy of existing State park facilities to meet demand for recreational opportunities in the State; (2) levels of operating funding and staff for existing State parks, as well as the need for capital funding to provide a high-quality experience to park visitors; (3) the need for new State park offerings and identification of any recreational deserts across Maryland; and (4) the extent to which State parks and associated recreational opportunities are adequately accessible to all populations of Marylanders, including low-income Marylanders, those who lack access to a car, and Marylanders with disabilities. As of November 9, 2021, the commission has held five meetings, with at least one more meeting planned before the end of November.

Challenges

The six main challenges identified in the various presentations given to the commission and background research conducted by the Department of Legislative Services are (1) capacity; (2) maintenance; (3) staffing; (4) funding; (5) equity; and (6) climate change.

Capacity: Increasing Recreational Opportunities

The Maryland Park Service (MPS) of the Department of Natural Resources (DNR) operates and maintains the State park system, which, as of 2020, covers approximately

141,180 acres and contains 53 general State parks (among other facilities and areas). Since 2013, the number of visitors to State parks has doubled. In 2020, a record-setting 21.5 million people visited State parks, a 45.0% increase from the 14.9 million in 2019. Also in 2020, there were 292 closures due to capacity limits in 11 parks across the State. According to DNR's 2016 Strategic Park Investment Plan, the single most important common denominator forcing park closures is the public demand for picnic facilities associated with access to water for swimming and wading. Expanding recreational opportunities on State public and private lands and coordinating with local governments and the federal government on connectivity of park systems and whole system park and recreation planning may alleviate capacity issues.

Maintenance

Maryland's State park system was largely developed by the Civilian Conservation Corps during the 1930s and 1940s and during the post-war period of the 1950s and 1960s. As a result, much of the park system infrastructure is over 40 years old and in dire need of ongoing reinvestment. DNR owns and manages over 120 facilities across the State and has approximately 2,000 buildings, 700 miles of roads, 29 dams, numerous bridges, and various other structures. The critical maintenance program backlog is estimated at $63.0 million and is made up of 551 projects. Maintenance issues could be addressed by targeting State and one-time federal funding to address the critical maintenance backlog, developing an assessment management system, and addressing staffing and general capacity constraints in DNR and the Department of General Services.

Staffing

Visitation to State parks has doubled since DNR and the Department of Budget and Management collaborated on a five-year strategic plan in 2013. The strategic plan identified an additional 70 positions needed for the operation and management of the then 66 State parks. In the eight years since the strategic plan was submitted, 25 new State parks and areas have been acquired or opened, yet only 13 permanent positions have been added. In addition, MPS struggles with both regular and short-term seasonal employee hiring, staff compensation relative to local and federal park systems, and park ranger authority for law enforcement. Possible solutions to these issues include adding personnel, optimizing management of volunteer labor, modifying hiring practices, providing compensation parity with other governmental levels, and addressing law enforcement/first responder considerations.

Funding

The main funding sources for MPS are (1) the Forest or Park Reserve Fund and an allocation of funding from the State transfer tax through Program Open Space (POS) for operating and capital purposes; (2) the Critical Maintenance Program for repairs of existing infrastructure; and (3) the Natural Resources Development Fund for new infrastructure. The Forest or Park Reserve Fund supports payment in lieu of taxes distributions to local jurisdictions in addition to park operations. POS transfer tax diversions totaled approximately $1.4 billion between fiscal 2002 and 2016, of which approximately $0.7 billion has been replaced and $90 million is in the process of being replaced, meaning $0.6 billion of the transfer tax funding diverted to the General Fund is not scheduled to be repaid. Through fiscal 2031, $242.2 million is scheduled to be replaced, comprised of the $90.0 million noted above and funding transferred during the fiscal 2016 through 2018 time period. Of this amount, $174.1 million remains to be replaced. Possible solutions for increasing funding for State parks include modifying the POS repayment, creating a new sustainable funding source, and specifying an overall funding level as a percentage of overall State funding necessary to meet parity with other states.

Equity: Addressing Barriers to Access

DNR, in collaboration with the University of Maryland School of Public Health, developed the Maryland Park Equity Mapper tool. The tool assists with determining where new park space is needed and which communities may be underserved or underutilized by existing park space. Components of the tool include population density, concentration of low-income households, concentration of children under the age of 17, concentration of adults over the age of 65, concentration of non-White population, distance to public park space, distance to public transportation, and walkability. Barriers to access may be eliminated by targeting investments using the Park Equity Mapper, partnering with the Maryland Department of Transportation on pilot programs for extended bus routes or a weekend shuttle service to State parks, improving bicycle and trail access to parks, and providing more accessibility options for people with disabilities and seniors.

Climate Change

Adaptive land management sea level rise models indicate that 68,700 acres of DNR-managed lands are located under two feet of elevation and vulnerable to inundation by 2050, with an additional 16,300 acres vulnerable by 2100. DNR plans to conduct a vulnerability assessment of State recreational lands that will use climate change-related geographic information system data, infrastructure data, and ecological data to identify and understand vulnerabilities and impacts, including long-term impacts to recreational use, water access, infrastructure, and ecosystem management. The Executive Order on Tackling the Climate Crisis at Home and Abroad, signed by President Joseph R. Biden, Jr. on January 27, 2021, has a goal of conserving at least 30% of U.S. lands and waters by 2030, otherwise known as 30x30. Adopting a 30x30 goal for Maryland and modernizing and integrating green technology and sustainable practice into all State park facilities may similarly assist the State in preparing for the impacts of climate change.

Policy Implications

The six main challenges noted above will require both legislative and budget actions to address the stresses on the Maryland Park system. While one-time federal funding can play a crucial role in the short term, particularly in reducing the critical maintenance backlog, in the long term, additional State investment will be necessary.

For more information contact: Andrew.Gray@mlis.state.md.us/Jeremy.D.Baker@mlis.state.md.us

State Government

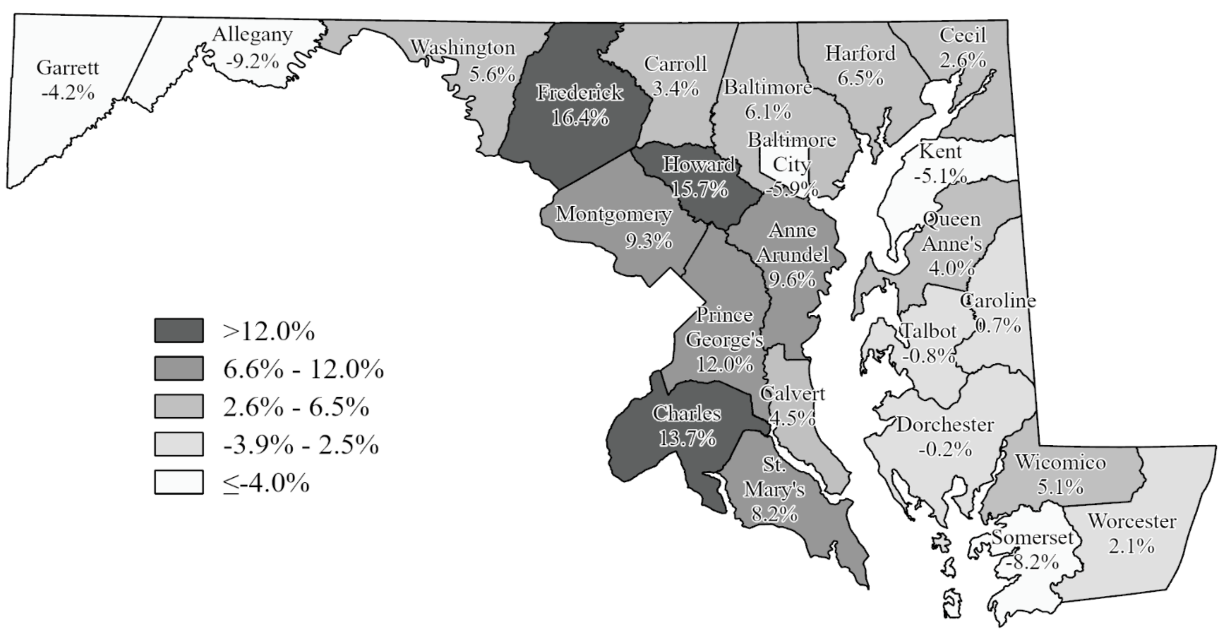
Redistricting

The State must adjust congressional and legislative district boundaries as a result of the 2020 decennial census to ensure that the districts continue to meet federal and State requirements.

Overview

Redistricting, or the periodic redrawing of congressional, state, and local electoral district boundaries to adjust for population changes, must be conducted every 10 years following the decennial census. **Exhibit 1** shows the percentage change in adjusted population for each of Maryland's counties and Baltimore City between the 2010 and 2020 censuses.

Exhibit 1
Percent Change in Adjusted Population by County*
2010-2020 Census



* The figures above are based on 2010 and 2020 federal census data adjusted in accordance with Chapters 66 and 67 of 2010. For more information, *see* the "Prisoner Reallocation" section of this issue paper below.

Source: Department of Legislative Services

The U.S. Constitution and the Voting Rights Act of 1965 govern both congressional and legislative redistricting. The Maryland Constitution and other State laws govern legislative redistricting. The only provision of State law that governs congressional redistricting concerns prisoner reallocation.

2021 Redistricting Process

In January 2021, the Governor established by executive order the Maryland Citizens Redistricting Commission to conduct regional hearings, receive public input, and propose State congressional and legislative district plans that comply with applicable legal requirements and meet other specified criteria. Pursuant to the executive order, the plans prepared by the commission may not account for individuals' voting history or political affiliation or the residence or domicile of any individual, including an incumbent officeholder or candidate for office. In addition, the executive order requires the commission to subdivide legislative districts into single-member delegate districts to the extent possible and consistent with the commission's other duties and responsibilities.

In July 2021, the Presiding Officers of the General Assembly appointed the Legislative Redistricting Advisory Commission to conduct virtual and in-person town hall meetings across the State and to prepare congressional and State legislative district plans for consideration by the General Assembly.

It is anticipated that a new congressional district plan will be adopted by the General Assembly at a December 2021 special session and that a new legislative district plan will be considered and enacted during the 2022 regular session of the General Assembly. The plans may be challenged in federal and State court.

Overview of Legal Requirements

Federal Legal Requirements

The U.S. Supreme Court has held that congressional districts are subject to a strict population equality standard under Article I, Section 2 of the U.S. Constitution. Accordingly, the population of congressional districts must be as close to mathematical equality as practicable. Additional flexibility is allowed for state and local legislative districts; the Supreme Court has held that the Equal Protection Clause of the Fourteenth Amendment requires legislative districts to be "substantially equal" in population.

The Equal Protection Clause and the Voting Rights Act of 1965 prohibit racially discriminatory redistricting and dilution of the voting power of racial and language minority groups. Under the Equal Protection Clause, states may not intentionally draw districts on the basis of race without compelling justification. Section 2 of the Voting Rights Act prohibits states from discriminating against racial or language minorities with respect to any "voting qualification or prerequisite to voting or standard, practice, or procedure." In the context of redistricting, Section 2 prohibits minority vote dilution or the drawing of districts in a way that causes a minority to not have an equal opportunity to participate in the political process and to elect candidates of their choice.

State Legal Requirements

Constitutional Requirements

The Maryland Constitution requires that each legislative district contain one senator and three delegates; single-member subdistricts may be used. Each legislative district must consist of adjoining territory, be compact in form, and be of substantially equal population. Due regard must be given to natural boundaries and the boundaries of political subdivisions.

Following each decennial census and after public hearings, the Governor must prepare a State legislative district plan and present the plan to the Presiding Officers of the General Assembly. The Presiding Officers must introduce the Governor's plan as a joint resolution by the first day of the regular session in the second year following the census. The Governor may call a special session for the presentation of the plan prior to the regular session.

The General Assembly may adopt a State legislative district plan by joint resolution. If the General Assembly does not adopt a plan by the forty-fifth day after the opening of the regular session, the Governor's plan becomes law. On petition of any registered voter, the Court of Appeals has original jurisdiction to review the legislative district plan and may grant appropriate relief if it finds that the plan is not consistent with the requirements of either the U.S. Constitution or the Maryland Constitution.

While the Maryland Constitution is silent on congressional redistricting, the congressional plan is introduced as a legislative bill and is subject to gubernatorial veto. The Governor is not required to submit a congressional plan to the General Assembly for consideration but has historically done so.

Prisoner Reallocation

Chapters 66 and 67 of 2010 require that population counts used to create the State's legislative and congressional district plans and legislative districts used to elect local governing bodies exclude individuals incarcerated in State or federal correctional facilities, as determined by the decennial census, who were not State residents prior to their incarceration. Individuals incarcerated in State or federal correctional facilities who were residents of the State prior to their incarceration must be counted at their last known residence.

For further information contact:
Darragh.Moriarty@mlis.state.md.us/Elizabeth.Allison@mlis.state.md.us/Scott.Kennedy@mlis.state.md.us

Local Government

State Aid to Local Governments

State aid to local governments is projected to total $9.4 billion in fiscal 2023, representing a $561.6 million, or 6.4%, increase over the prior year. Public schools will continue to receive a vast majority of State aid with State support totaling $8.0 billion in fiscal 2023.

Projected Funding

Local governments are projected to receive $9.4 billion in State aid in fiscal 2023, representing a $561.6 million, or 6.4%, increase over the prior year. Public schools will receive the vast majority of the State funding, while counties and municipalities will receive 8.4% of the total funding. Public schools will receive $8.0 billion in fiscal 2023, which is 85.8% of total State aid. Counties and municipalities will receive $789.0 million in fiscal 2023, with $276.4 million targeted to transportation initiatives and $183.7 million targeted to public safety programs. Community colleges, libraries, and local health departments will receive $543.1 million, which accounts for 5.8% of total State aid. **Exhibit 1** shows the change in State aid by governmental entity for fiscal 2023. **Exhibit 2** shows the change in State aid by major programs.

Exhibit 1
State Aid to Local Governments
Fiscal 2023
($ in Millions)

	State Aid Amount	Percent of Total	Aid Change	Percent Change
Public Schools	$8,040.3	85.8%	$517.6	6.9%
Counties/Municipalities	789.0	8.4%	23.2	3.0%
Community Colleges	386.6	4.1%	15.1	4.1%
Libraries	87.9	0.9%	2.9	3.4%
Local Health Departments	68.6	0.7%	2.8	4.2%
Total	**$9,372.3**	**100.0%**	**$561.6**	**6.4%**

Note: Public Schools funding amounts assume enrollment figures consistent with pre-COVID-19 trends. If fall 2021 enrollment is considerably lower than anticipated, State aid totals will consequently be lower than shown, absent any initiative in the fiscal 2023 budget to address low enrollment.

Source: Department of Legislative Services

Exhibit 2
State Aid by Major Programs
Fiscal 2020-2023
($ in Millions)

	2020	2021	2022	2023	Difference	Percent Difference
Public Schools						
Foundation Programs	$3,429.6	$3,502.7	$3,413.3	$3,862.9	$449.6	13.2%
Compensatory Aid	1,330.4	1,364.7	1,286.7	1,438.2	151.5	11.8%
English Language Learners	311.1	348.2	334.3	419.7	85.4	25.5%
Special Education - Formula Aid	303.2	314.9	311.1	421.4	110.3	35.5%
Special Education - Nonpublic	116.0	123.9	127.0	131.3	4.3	3.4%
Student Transportation	303.0	310.2	288.1	347.1	59.0	20.5%
Guaranteed Tax Base	43.7	41.2	49.9	43.8	-6.0	-12.1%
Head Start/Prekindergarten	50.7	29.6	29.6	29.6	0.0	0.0%
Blueprint Programs	245.7	339.5	390.8	525.1	134.3	34.4%
Blueprint COVID Relief	0.0	45.0	211.6	0.0	-211.6	-100.0%
Blueprint Hold Harmless	0.0	0.0	209.4	0.0	-209.4	-100.0%
Other Education Programs	93.2	90.7	92.0	104.3	12.3	13.3%
Subtotal Direct Aid	***$6,226.6***	***$6,510.7***	***$6,743.7***	***$7,323.3***	***$579.6***	***8.6%***
Retirement Payments	767.9	750.3	779.0	716.9	-62.0	-8.0%
Total Public School Aid	**$6,994.5**	**$7,261.0**	**$7,522.7**	**$8,040.3**	**$517.6**	**6.9%**
Libraries						
Library Aid Formula	$43.2	$44.1	$44.7	$46.7	$2.0	4.5%
State Library Network	19.1	19.5	19.8	20.5	0.8	3.9%
Subtotal Direct Aid	***$62.3***	***$63.6***	***$64.4***	***$67.2***	***$2.8***	***4.3%***
Retirement Payments	20.7	20.2	20.5	20.6	0.2	0.8%
Total Library Aid	**$83.0**	**$83.8**	**$84.9**	**$87.9**	**$2.9**	**3.4%**
Community Colleges						
Community College Formula	$249.7	$249.7	$290.1	$303.0	$12.9	4.4%
Other Programs	35.0	44.5	35.5	36.6	1.2	3.3%
Subtotal Direct Aid	***$284.7***	***$294.2***	***$325.6***	***$339.6***	***$14.1***	***4.3%***
Retirement Payments	45.6	45.4	46.0	47.0	1.0	2.2%
Total Community College Aid	**$330.3**	**$339.6**	**$371.5**	**$386.6**	**$15.1**	**4.1%**
Local Health Grants	**$59.4**	**$61.4**	**$65.8**	**$68.6**	**$2.8**	**4.2%**

	2020	2021	2022	2023	Difference	Percent Difference
County/Municipal Aid						
Transportation	$242.9	$242.6	$259.9	$276.4	$16.5	6.3%
Public Safety	150.5	183.0	183.0	183.7	0.7	0.4%
Disparity Grant	146.2	163.3	158.2	159.4	1.2	0.8%
Gaming Impact Aid	67.5	92.2	96.7	98.4	1.7	1.7%
Other Grants	57.1	63.4	68.0	71.1	3.1	4.6%
Total County/Municipal Aid	**$664.1**	**$744.4**	**$765.8**	**$789.0**	**$23.2**	**3.0%**
Total State Aid	**$8,131.4**	**$8,490.2**	**$8,810.7**	**$9,372.3**	**$561.6**	**6.4%**

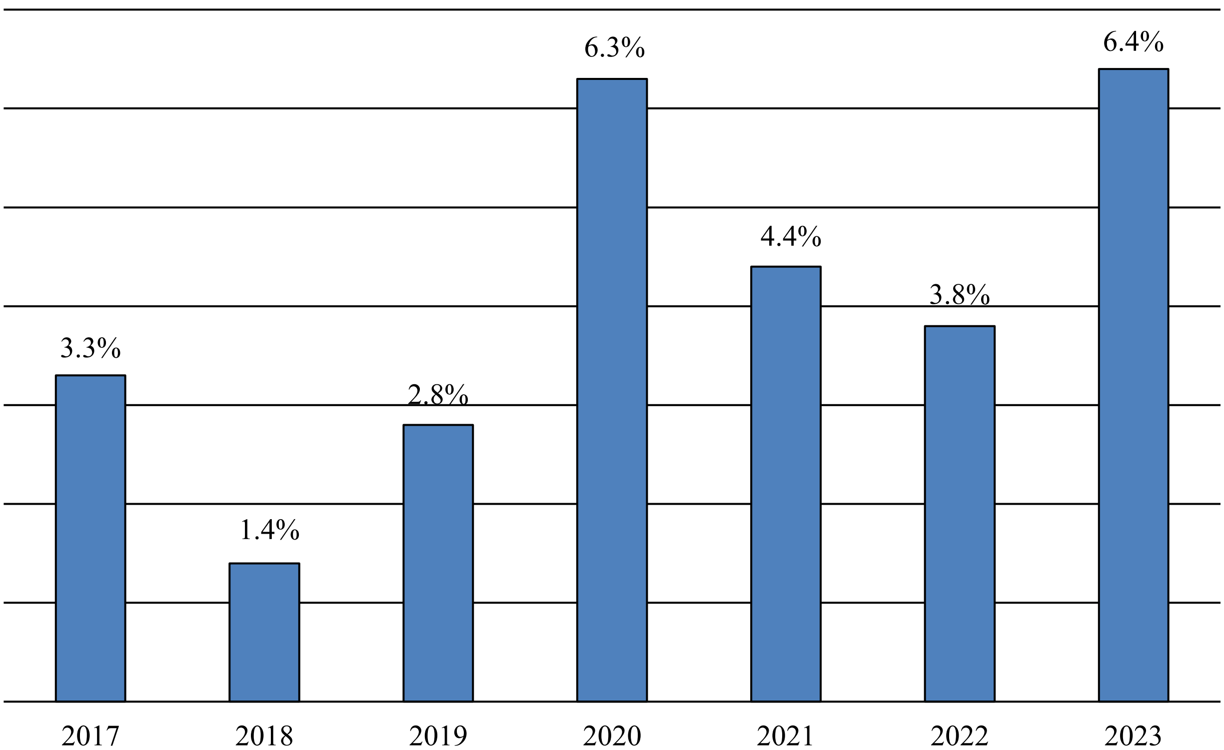
Source: Department of Legislative Services

State Aid Funding Trend

As shown in **Exhibit 3**, the projected 6.4% growth in State aid in fiscal 2023 exceeds the growth rate in recent years, largely due to increased funding under the Blueprint for Maryland's Future (Chapters 36 and 55 of 2021), which accelerates funding for public schools beginning in fiscal 2023. The per pupil foundation amount increases by 12.4% in fiscal 2023. In total, education funding under the foundation programs will increase by $449.6 million, or 13.2%, primarily due to the increase in the per pupil foundation amount and projected enrollment increases. Compensatory aid will increase by $151.5 million, or 11.8%; special education formula funding increases by $110.3 million, or 35.5%; and funding for English language learners increases by $85.4 million, or 25.5%. Fiscal 2023 marks the initiation of several programs under the Blueprint for Maryland's Future, including $138.7 million for education effort adjustments, $75.9 million in formula aid for full-day prekindergarten, and $57.7 million for transition grants, as well as enhancements to existing programs, including a $65.7 million increase for the concentration of poverty grant program. Funding increases for public schools are offset by the discontinuation of several programs and relief provisions, including $209.4 million in hold harmless grants and $211.6 million in COVID-19 relief funding provided in fiscal 2022. Public schools funding amounts assume enrollment figures consistent with pre-COVID-19 trends. If fall 2021 enrollment is considerably lower than anticipated, State aid totals will consequently be lower than shown, absent any initiative in the fiscal 2023 budget to address the funding consequences of low enrollment.

Highway user grants increase by $16.5 million, or 6.3%, in fiscal 2023 due to increased revenues credited to the Gasoline and Motor Vehicle Revenue Account within the Transportation Trust Fund. Fiscal 2023 Cade formula funding for community colleges increases by $12.9 million, or 4.4%. This results from increased per student funding at selected four-year public higher education institutions and an increase from 27% to 29% in the percentage of funding at these institutions that is applied to community colleges. Funding under the disparity grant program increases by $1.2 million, or 0.8%, in fiscal 2023, and gaming impact aid increases by $1.7 million, or 1.7%.

Exhibit 3
Annual Change in State Aid to Local Governments
Fiscal 2017-2023



Source: Department of Legislative Services

For further information contact: Scott.Gates@mlis.state.md.us

Local Government

Local Revenue Trends

County governments are projecting modest growth in local tax revenues in fiscal 2022, following slow growth and declines in many tax categories in fiscal 2021 due to the economic impacts of the COVID-19 pandemic. In addition, several counties have revised their original fiscal 2021 budget estimates, as the State economy has ultimately performed better than originally anticipated at the start of the pandemic.

Overview

The local fiscal outlook reflects modest growth as the State's economy continues to rebound from the COVID-19 pandemic. In fiscal 2022, local tax revenues are projected to increase in each tax category (**Exhibit 1**). Income tax collections, which were negatively impacted by increased statewide unemployment, and other tax revenues, which declined as a result of decreased economic activity due to the pandemic, begin to trend upward. Local general fund revenues increase statewide by 2.4% in fiscal 2022, and total local tax revenues increase by 2.5%.

Exhibit 1
County Revenue Projections
Annual Percent Change
Fiscal 2020-2022

	2020-21	2021-22	Two-year Average
Property Taxes	2.7%	2.4%	2.6%
Income Taxes	-0.9%	2.1%	0.6%
Recordation Taxes	-8.4%	5.1%	-1.9%
Transfer Taxes	-1.4%	0.5%	-0.5%
Hotel Rental Taxes	-40.3%	50.6%	-5.2%
Admissions Taxes	-55.6%	99.7%	-5.8%
Other Local Taxes	-2.6%	0.9%	-0.9%
Total Local Taxes	0.4%	2.5%	1.4%
General Fund Revenues	0.3%	2.4%	1.3%

Source: Department of Legislative Services

Property tax revenues remain fairly stable in many counties. Despite a slight decrease in growth from fiscal 2021 to 2022, property tax collections account for the largest percentage increase over the fiscal 2020 to 2022 period with revenue growth at 2.6% statewide. Local income tax collections are projected to increase by 2.1% in fiscal 2022, following a decrease of 0.9% in fiscal 2021, for an average growth rate of 0.6% over the two-year period.

General Fund Revenues

General fund revenues for county governments are projected to total $17.2 billion in fiscal 2022 (**Exhibit 2**). Revenue amounts range from $40.1 million in Somerset County to over $3.6 billion in Montgomery County. On a per capita basis, the amount ranges from $1,356 in Allegany County to $4,049 in Worcester County, with the statewide average at $2,841. General fund revenues (per capita) are the highest in Calvert, Howard, Montgomery, and Worcester counties, and Baltimore City. The lowest per capita amounts are in Allegany and Wicomico counties.

The revenue trend for most county governments points upward, with general fund revenues increasing statewide by 2.4% in fiscal 2022 compared to a 0.3% growth rate in fiscal 2021. Over a two-year period, local general fund revenues are expected to increase by $444.4 million, from $16.8 billion in fiscal 2020 to $17.2 billion in fiscal 2022. This represents a 1.3% average annual increase over the two-year period.

Four jurisdictions are anticipating a decrease in general fund revenues over the two-year period. In the other counties, the average annual increase ranges from 0.1% in Cecil and Kent counties to 5.9% in St. Mary's County. Two counties are expecting average annual increases of 5% or greater, while seven counties are expecting increases between 2% and 5%.

Exhibit 2
Total General Fund Revenues
Fiscal 2020-2022
($ in Millions)

County	2020	2021	2022	2020-21 $ Difference	2020-21 % Difference	2021-22 $ Difference	2021-22 % Difference	Average Annual Difference
Allegany	$93.4	$93.7	$95.0	$0.3	0.3%	$1.3	1.4%	0.8%
Anne Arundel	1,683.4	1,729.4	1,762.3	46.0	2.7%	32.9	1.9%	2.3%
Baltimore City	1,917.5	1,894.1	2,002.7	-23.4	-1.2%	108.7	5.7%	2.2%
Baltimore	2,208.6	2,237.2	2,257.4	28.6	1.3%	20.2	0.9%	1.1%
Calvert	315.6	317.2	326.7	1.6	0.5%	9.5	3.0%	1.7%
Caroline	53.4	55.5	57.0	2.1	4.0%	1.4	2.6%	3.3%
Carroll	405.9	402.3	418.9	-3.7	-0.9%	16.6	4.1%	1.6%
Cecil	201.8	199.2	202.2	-2.6	-1.3%	3.0	1.5%	0.1%
Charles	421.6	424.7	441.1	3.1	0.7%	16.4	3.9%	2.3%
Dorchester	54.5	58.4	60.3	3.8	7.0%	1.9	3.3%	5.2%
Frederick	639.8	639.8	687.5	0.0	0.0%	47.7	7.5%	3.7%
Garrett	90.2	82.5	87.5	-7.7	-8.5%	5.0	6.1%	-1.5%
Harford	664.9	596.1	611.0	-68.8	-10.3%	14.9	2.5%	-4.1%
Howard	1,214.2	1,160.4	1,201.4	-53.9	-4.4%	41.1	3.5%	-0.5%
Kent	51.4	47.8	51.5	-3.5	-6.9%	3.6	7.6%	0.1%
Montgomery	3,533.5	3,653.9	3,624.3	120.3	3.4%	-29.6	-0.8%	1.3%
Prince George's	2,071.2	2,103.5	2,134.2	32.3	1.6%	30.7	1.5%	1.5%
Queen Anne's	150.5	140.0	152.4	-10.6	-7.0%	12.5	8.9%	0.6%
St. Mary's	247.8	248.3	277.8	0.4	0.2%	29.5	11.9%	5.9%
Somerset	39.1	39.1	40.1	0.0	-0.1%	1.0	2.6%	1.3%
Talbot	105.0	96.5	91.0	-8.5	-8.1%	-5.5	-5.7%	-6.9%
Washington	245.8	235.9	251.9	-9.9	-4.0%	16.0	6.8%	1.2%
Wicomico	146.8	149.3	157.5	2.4	1.6%	8.2	5.5%	3.6%
Worcester	203.6	204.3	212.2	0.7	0.3%	7.9	3.8%	2.1%
Total	**$16,759.7**	**$16,809.0**	**$17,204.1**	**$49.3**	**0.3%**	**$395.1**	**2.4%**	**1.3%**

Source: Department of Legislative Services; County Budgets

Local Tax Revenues

The projected growth in local tax revenues, which includes both general and special fund revenues, has started to rebound, with local revenues increasing by 2.5% in fiscal 2022, compared to 0.4% in fiscal 2021 (**Exhibit 3**). The average annual increase in local tax revenues over the two-year period is projected at 1.4%. In total, local governments are projected to collect $17.2 billion in local tax revenues, which is a $485.5 million increase since fiscal 2020.

Exhibit 3
Total Local Taxes for Fiscal 2020-2022
($ in Millions)

County	2020	2021	2022	2020-21 $ Difference	2020-21 % Difference	2021-22 $ Difference	2021-22 % Difference	Average Annual Difference
Allegany	$73.3	$74.1	$76.2	$0.8	1.1%	$2.1	2.8%	2.0%
Anne Arundel	1,559.7	1,608.1	1,635.6	48.4	3.1%	27.5	1.7%	2.4%
Baltimore City	1,544.0	1,553.9	1,588.5	9.9	0.6%	34.6	2.2%	1.4%
Baltimore	2,031.5	2,064.8	2,094.9	33.3	1.6%	30.1	1.5%	1.5%
Calvert	299.0	302.8	312.7	3.8	1.3%	9.9	3.3%	2.3%
Caroline	46.2	47.7	48.8	1.6	3.4%	1.1	2.3%	2.8%
Carroll	406.7	406.1	421.7	-0.6	-0.2%	15.6	3.9%	1.8%
Cecil	200.4	198.2	201.7	-2.2	-1.1%	3.5	1.8%	0.3%
Charles	411.2	417.4	434.8	6.2	1.5%	17.4	4.2%	2.8%
Dorchester	49.1	50.6	51.6	1.5	3.0%	1.0	2.0%	2.5%
Frederick	630.6	638.2	686.9	7.7	1.2%	48.6	7.6%	4.4%
Garrett	76.2	72.4	76.2	-3.8	-5.0%	3.8	5.3%	0.0%
Harford	607.1	622.4	635.7	15.3	2.5%	13.4	2.1%	2.3%
Howard	1,386.4	1,316.0	1,364.0	-70.4	-5.1%	48.0	3.6%	-0.8%
Kent	50.3	48.0	49.0	-2.2	-4.5%	1.0	2.0%	-1.3%
Montgomery	4,031.9	4,022.6	4,104.8	-9.3	-0.2%	82.2	2.0%	0.9%
Prince George’s	2,226.2	2,265.3	2,295.6	39.2	1.8%	30.2	1.3%	1.5%
Queen Anne’s	142.7	132.6	145.6	-10.1	-7.1%	13.1	9.9%	1.0%
St. Mary’s	236.5	238.4	256.2	1.9	0.8%	17.8	7.5%	4.1%
Somerset	26.6	25.5	26.5	-1.1	-4.3%	1.1	4.3%	-0.1%
Talbot	97.9	89.6	84.5	-8.4	-8.6%	-5.1	-5.7%	-7.1%
Washington	233.8	231.4	245.1	-2.4	-1.0%	13.7	5.9%	2.4%
Wicomico	126.9	127.5	132.1	0.6	0.4%	4.6	3.6%	2.0%
Worcester	184.5	185.0	195.2	0.5	0.3%	10.2	5.5%	2.9%
Total	**$16,678.4**	**$16,738.5**	**$17,163.9**	**$60.1**	**0.4%**	**$425.4**	**2.5%**	**1.4%**

Source: Department of Legislative Services; County Budgets

Statewide, local tax revenues average $2,834 per capita. The highest per capita amounts are in Calvert, Howard, Montgomery, and Worcester counties, where local tax revenues exceed

$3,000 per capita. The lowest per capita amounts are in Allegany, Caroline, Somerset, and Wicomico counties, where local tax revenues are below $1,500 per capita.

Most jurisdictions are realizing average annual increases in local tax revenues of between 1% and 4%. Only Frederick and St. Mary's counties are anticipating increases in excess of 4%, while two counties (Cecil and Montgomery) are anticipating increases below 1%. Five counties anticipate a decrease or no growth in local tax revenues over the two-year period. Increases in total local tax revenues are driven primarily by increases in income tax collections due to decreased unemployment and more optimistic personal income projections. Additionally, revenues from other local taxes are projected to increase and exceed fiscal 2021 levels due to increased economic activity resulting from reopenings and the resumption of in person activities following the easing of restrictions put in place to combat the pandemic.

Property Taxes

Due to the triennial assessment process and homestead assessment caps, the property tax remains a relatively stable and predictable revenue source for county governments. Revenue collections are projected to total $9.3 billion in fiscal 2022. This represents a $458.7 million increase over a two-year period. For the most part, the increase in county property tax revenue is driven by the growth in the jurisdiction's property tax base. Based on projections by the State Department of Assessments and Taxation, the county assessable base will increase by 2.6% in fiscal 2022, which is a decrease from the 3.0% growth rate in fiscal 2021. Although over half of counties are projected to realize growth rates of over 2%, several counties are projected to experience growth rates of 1% or less, which could constrain revenue growth.

The average annual increase in local property tax revenues over the two-year period ranges from 0.4% in Howard County to 4.9% in Frederick County. Kent County is the only jurisdiction anticipating a decrease in property tax revenues over the two-year period. However, seven counties are experiencing annual increases of less than 2% a year, while three counties are experiencing growth rates of 3% or higher.

Income Taxes

Local income tax revenues are projected to total $6.3 billion in fiscal 2022. This represents a $73.2 million increase over a two-year period. The average annual increase in local income tax revenues over the two-year period ranges from 0.2% in Montgomery County to 6.1% in St. Mary's County. However, nine counties are experiencing a decrease in local income tax revenues over the two-year period, and six counties are experiencing annual growth rates below 2%. Two counties realize growth rates of 4% or higher.

For further information contact: Samuel.Quist@mlis.state.md.us

Local Government

Local Government Tax Actions

County governments made more tax rate changes for fiscal 2022 than for fiscal 2021. However, rate changes were limited overall.

Local Government Tax Rates

Eleven counties altered local tax rates in fiscal 2022. As shown in **Exhibit 1**, eight counties made changes to local property tax rates with seven counties decreasing their rates and one county increasing them. Two counties decreased their income tax rates. One county increased its recordation tax rate. No county altered its transfer, admissions and amusement, or hotel rental tax rates. A comparison of local tax rates for fiscal 2021 and 2022 is provided in **Exhibit 2**.

Exhibit 1
Counties Changing Local Tax Rates
Fiscal 2020-2022

	2020		2021		2022	
	▲	▼	▲	▼	▲	▼
Real Property	5	2	1	3	1	7
Local Income	7	0	0	0	0	2
Recordation	0	0	0	0	1	0
Transfer	0	0	1	0	0	0
Admissions/Amusement	0	0	0	0	0	0
Hotel Rental	3	0	0	0	0	0

Note: ▲ represents a tax rate increase and ▼ represents a tax rate decrease.

Source: Department of Legislative Services; Maryland Association of Counties

Exhibit 2
Local Tax Rates – Fiscal 2021 and 2022

	Real Property		Local Income		Recordation		Transfer		Admissions/Amusement		Hotel Rental	
County	**2021**	**2022**	**2021**	**2022**	**2021**	**2022**	**2021**	**2022**	**2021**	**2022**	**2021**	**2022**
Allegany	$0.9750	$0.9750	3.05%	3.05%	$3.50	$3.50	0.5%	0.5%	7.5%	7.5%	8.0%	8.0%
Anne Arundel	0.9340	0.9330	2.81%	2.81%	3.50	3.50	1.0%	1.0%	10.0%	10.0%	7.0%	7.0%
Baltimore City	2.2480	2.2480	3.20%	3.20%	5.00	5.00	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Baltimore	1.1000	1.1000	3.20%	3.20%	2.50	2.50	1.5%	1.5%	10.0%	10.0%	9.5%	9.5%
Calvert	0.9320	0.9270	3.00%	3.00%	5.00	5.00	0.0%	0.0%	1.0%	1.0%	5.0%	5.0%
Caroline	0.9800	0.9800	3.20%	3.20%	5.00	5.00	0.5%	0.5%	0.0%	0.0%	5.0%	5.0%
Carroll	1.0180	1.0180	3.03%	3.03%	5.00	5.00	0.0%	0.0%	10.0%	10.0%	5.0%	5.0%
Cecil	1.0414	1.0279	3.00%	3.00%	4.10	4.10	0.5%	0.5%	6.0%	6.0%	6.0%	6.0%
Charles	1.2050	1.2050	3.03%	3.03%	5.00	5.00	0.5%	0.5%	10.0%	10.0%	5.0%	5.0%
Dorchester	1.0000	1.0000	3.20%	3.20%	5.00	5.00	0.75%	0.75%	0.5%	0.5%	5.0%	5.0%
Frederick	1.0600	1.0600	2.96%	2.96%	6.00	7.00	0.0%	0.0%	0.0%	0.0%	5.0%	5.0%
Garrett	1.0560	1.0560	2.65%	2.65%	3.50	3.50	1.0%	1.0%	6.0%	6.0%	8.0%	8.0%
Harford	1.0420	1.0279	3.06%	3.06%	3.30	3.30	1.0%	1.0%	5.0%	5.0%	6.0%	6.0%
Howard	1.2500	1.2500	3.20%	3.20%	2.50	2.50	1.25%	1.25%	7.5%	7.5%	7.0%	7.0%
Kent	1.0220	1.0120	3.20%	3.20%	3.30	3.30	0.5%	0.5%	4.5%	4.5%	5.0%	5.0%
Montgomery	0.9912	0.9905	3.20%	3.20%	4.45	4.45	1.0%	1.0%	7.0%	7.0%	7.0%	7.0%
Prince George’s	1.3740	1.3740	3.20%	3.20%	2.75	2.75	1.4%	1.4%	10.0%	10.0%	7.0%	7.0%
Queen Anne’s	0.8471	0.8471	3.20%	3.20%	4.95	4.95	0.5%	0.5%	5.0%	5.0%	5.0%	5.0%
St. Mary’s	0.8478	0.8478	3.17%	3.10%	4.00	4.00	1.0%	1.0%	2.0%	2.0%	5.0%	5.0%
Somerset	1.0000	1.0000	3.20%	3.20%	3.30	3.30	0.0%	0.0%	4.0%	4.0%	5.0%	5.0%
Talbot	0.6372	0.6565	2.40%	2.40%	6.00	6.00	1.0%	1.0%	5.0%	5.0%	4.0%	4.0%
Washington	0.9480	0.9480	3.20%	3.00%	3.80	3.80	0.5%	0.5%	5.0%	5.0%	6.0%	6.0%
Wicomico	0.9286	0.9195	3.20%	3.20%	3.50	3.50	0.0%	0.0%	6.0%	6.0%	6.0%	6.0%
Worcester	0.8450	0.8450	2.25%	2.25%	3.30	3.30	0.5%	0.5%	3.0%	3.0%	5.0%	5.0%

Note: The real property tax rates shown for Charles, Howard, Montgomery, and Prince George’s counties include special tax rates. Real property tax is $100 of assessed value. Income tax is a percentage of income. Recordation tax is per $500 of transaction.

Source: Department of Legislative Services; Maryland Association of Counties

Property Tax

For fiscal 2022, seven counties (Anne Arundel, Calvert, Cecil, Harford, Kent, Montgomery, and Wicomico) decreased their real property tax rates. Talbot County slightly increased its real property tax rate. Real property tax rates range from $0.6565 per $100 of assessed value in Talbot County to $2.248 in Baltimore City.

Income Tax

Two counties (St. Mary's and Washington) decreased their local income tax rates for calendar 2022. The maximum local income tax rate allowed by State law is 3.2%. Local income tax rates range from 2.25% in Worcester County to 3.2% in 11 jurisdictions (Baltimore City and Baltimore, Caroline, Dorchester, Howard, Kent, Montgomery, Prince George's, Queen Anne's, Somerset, and Wicomico counties). Approximately two-thirds of the State's population resides in a jurisdiction with a 3.2% local income tax rate.

Recordation Tax

Frederick County increased its recordation tax rate for fiscal 2022. Recordation tax rates range from $2.50 per $500 of transaction in Baltimore and Howard counties to $7.00 per $500 of transaction in Frederick County.

Transfer Tax

No county altered its transfer tax rate for fiscal 2022. Local transfer tax rates range from 0.5% in eight counties (Allegany, Caroline, Cecil, Charles, Kent, Queen Anne's, Washington, and Worcester) to 1.5% in Baltimore City and Baltimore County. Five counties (Calvert, Carroll, Frederick, Somerset, and Wicomico) do not impose a tax on property transfers.

Admissions and Amusement Tax

No county altered its admissions and amusement tax rate for fiscal 2022. Caroline and Frederick counties are the only jurisdictions that do not impose an admissions and amusement tax. Currently, admissions and amusement tax rates range from 0.5% in Dorchester County to 10.0% in six jurisdictions (Baltimore City and Anne Arundel, Baltimore, Carroll, Charles, and Prince George's counties).

Hotel Rental Tax

No county altered its hotel rental tax rate for fiscal 2022. Hotel rental tax rates range from 4.0% in Talbot County to 9.5% in Baltimore City and Baltimore County.

Tax Limitation Measures

Five charter counties (Anne Arundel, Montgomery, Prince George's, Talbot, and Wicomico) have amended their charters to limit property tax rates or revenues. In Anne Arundel County, the total annual increase in property tax revenues is limited to the lesser of 4.5% or the increase in the Consumer Price Index (CPI). In Montgomery County, a real property tax rate that exceeds the real property tax rate approved for the previous year may only be adopted if approved by all members of the county council. In Prince George's County, the general property tax rate is capped at $0.96 per $100 of assessed value. Special taxing districts, such as the Maryland-National Capital Park and Planning Commission, are not included under the tax cap. In Wicomico County, the total annual increase in property tax revenues is limited to the lesser of 2% or the increase in CPI. In Talbot County, the total annual increase in property tax revenues is limited to 2%.

Counties may exceed the charter limitations on local property taxes for the purpose of funding the approved budget of the local boards of education. If a local property tax rate is set above the charter limit, the county governing body may not reduce funding provided to the local board of education from any other local source and must appropriate to the local board of education all of the revenues generated from any increase beyond the existing charter limit. This authority was adopted at the 2012 regular session to ensure that counties have the fiscal ability to meet education maintenance of effort requirements.

In fiscal 2013, Talbot County became the first jurisdiction to exercise this new authority by establishing a $0.026 supplemental property tax rate for the local board of education. In fiscal 2016, Prince George's County became the second county to exercise this authority by enacting a $0.04 supplemental property tax rate to fund its schools. In fiscal 2017, Talbot County again exceeded its charter limit by establishing a $0.0086 supplemental property tax rate for public schools, and Montgomery County exceeded its charter limit through a unanimous vote by the county council. In fiscal 2018, Talbot County exceeded its charter limit by approving a $0.0159 supplemental property tax rate for the board of education. In fiscal 2019, Talbot County's property tax rate exceeded the charter limit by $0.025 with the additional revenue attributable to the rate increase above the tax cap appropriated to the board of education. In fiscal 2020, Anne Arundel County exceeded its charter limit for the first time, enacting a supplemental tax rate of $0.034 for the county board of education. Talbot County also exceeded its charter limit in fiscal 2020, enacting a $0.023 supplemental tax rate for the board of education. For fiscal 2022, Talbot County exceeded its charter limit by enacting a $0.0036 supplemental tax rate for the board of education.

For further information contact: Michael.Sanelli@mlis.state.md.us

Local Government

Local Government Salary Actions

Twenty-three county governments and boards of education provided salary enhancements to their employees in fiscal 2022, with 17 counties and 18 boards of education providing cost-of-living adjustments/general salary increases and 17 counties and 20 boards providing step/merit increases.

In total, 23 counties will provide some type of salary enhancement in fiscal 2022, either in the form of a cost-of-living adjustment (COLA), general salary increase (GSI), step or merit increase, or a combination of enhancements. In a few instances, the salary enhancements are limited to certain groups of employees. **Exhibit 1** compares local salary actions in fiscal 2021 and 2022. By comparison, the State will not award a COLA or steps to its employees in fiscal 2022; however, most employees, with the exception of those represented by the American Federation of State, County and Municipal Employees, will receive a one-time $500 bonus if general fund revenues exceed certain targets, with an additional 1% increase if revenues exceed the targets by at least $200 million.

Exhibit 1
State and Local Government Salary Actions
Fiscal 2021 and 2022

	County Government		Public Schools	
Salary Action	**2021**	**2022**	**2021**	**2022**
COLA/GSI	10	17	17	18
Step/Merit Increases	9	17	19	20
	State Government		**CPI-Urban Consumers[1]**	
	2021	**2022**	**2021**	**2022**
COLA Amount	2.0%	No	2.3%	4.6%
Step/Merit Increases	No	No		

COLA: cost-of-living adjustment
CPI: Consumer Price Index
GSI: general salary increase

[1] CPI for 2022 is an average of the forecasts taken from Moody's Analytics and HIS, Inc. CPI for 2021 is actual.

Source: Department of Legislative Services

Exhibit 2 presents specific salary actions for county governments and Baltimore City in the current fiscal year. Seventeen local governments provided their employees with a COLA or GSI in fiscal 2022, compared to 10 in fiscal 2021. This figure does not include 1 government that provided COLAs to specific bargaining units and not employees generally. Seventeen local governments provided step or merit increases in fiscal 2022, compared to 9 in fiscal 2021. Finally, 2 counties and Baltimore City had not completed negotiations for all bargaining units by October 22, 2021.

With regard to specific salary actions undertaken by local boards of education in the current fiscal year, 18 boards provided COLAs or GSIs for their employees compared to 17 boards that did so in fiscal 2021. This figure does not include 4 boards that provided COLAs to specific bargaining units but not teachers, either because no COLA was negotiated for the teachers or because negotiations with the teachers were ongoing. Additionally, 20 boards of education are providing step or merit increases in fiscal 2022, compared to 19 boards that did so in fiscal 2021. This figure does not include 1 board that plans to award steps to specific bargaining units but is still in negotiations with representatives for teachers. Three boards had not completed negotiations for all bargaining units by October 22, 2021. **Exhibit 3** details the salary actions by local boards of education in fiscal 2022.

Exhibit 2

County Government Salary Actions in Fiscal 2022

County	COLA/GSI	Step/Merit	Additional Comments
Allegany	2.0%	No	County employees, generally, roads employees, and Emergency Medical Services each receive a 2.0% COLA. 9-1-1 dispatch receives a salary increase of 25% per person, based on the county's assessment of similar positions and consideration of the impending increase in minimum wage. Transit and Sheriff's Patrol each had their pay scales restructured. Negotiations for corrections are still ongoing.
Anne Arundel	1.5%	Yes	All units receive a COLA of between 1.50% and 3.0% and a merit of at least 3%, with the exception of FOP (placed on a new scale, step adjustment), IAFF (placed on a new scale, step adjustment), and Sheriff Sergeants (6% scale adjustment). Flexible workers in the maintenance career path of AFSCME 582 receive a flat 2% increase with each skill set, as opposed to the 1.5% COLA and 3.0% merit received by non-flexible worker members of AFSCME 582.
Baltimore City	TBD	TBD	Negotiations with the county's bargaining units on fiscal matters had not been completed by the deadline for submitting responses for this report.
Baltimore	0.0%	Yes	Police and nurses receive GSIs of $1,800 and $2,000, respectively, while Trades and Sheriffs receive a 2.0% COLA. Police and firefighters receive a stipend for certain assignments or certifications (amounts vary). All employees receive a step increase ranging from 3.0% to 5.0% (varies by unit).
Calvert	0.0%	Yes	All employees, including Sheriff and Correctional deputies, receive a 1 step merit increase.
Caroline	3.0%	Yes	All employees except the Sheriff's Office received either a 3.0% GSI or a flat $2,000 GSI, whichever was greater. Per request of the Sheriff's Office, the county no longer provides Sheriff's Office employee salary information to outside agencies. Per the most recent Caroline County budget document, funds available for salaries for the Sheriff's Office in fiscal 2022 (inclusive of salaries for contractual employees) increase by approximately 1.8% over fiscal 2021.

County	COLA/GSI	Step/Merit	Additional Comments
Carroll	3.55%	Yes	All bargaining units receive a COLA of 3.55% and an increment with an indicated value of 2.0%, with the exception of the Sheriff's office. The Sheriff's Office establishes its own pay scale, within funding limits, and was awarded a significant increase for fiscal 2022. A range of COLAs and increments was provided for both law enforcement and civilian members of the office, as well as detention center officers. The unweighted average COLA for the law enforcement members is 15.75%, with increments between 1.0% and 4.0%. The unweighted average COLA for civilian members is 7.48%, with increments between 1.5% and 2.0%. The unweighted average COLA for the detention center officers is 9.38%, with increments between 2.2% and 4.0%.
Cecil	1.25%	Yes	1.25% COLA for county government employees, generally. IAFF and FOP receive COLAs of 1.5% and 3.0%, respectively. All bargaining units receive a step increase. The value of the step is indicated as 2.0%.
Charles	1.4%	Yes	All bargaining units will receive a 1.4% COLA on January 1, 2022, with the exception of FOP, which received a 4.0% COLA on July 1, 2021. All bargaining units receive a merit (3.0% of midpoint), with the exception of FOP, which receives a 1 step increase. A pay scale adjustment is planned for corrections as of July 1, 2022 (increases of 2.61% to 4.75%).
Dorchester	0.0%	Yes	Value of the step indicated as 2.5%.
Frederick	1.5%	Yes	Corrections and law enforcement each receive a 4.5% COLA. Fire and Rescue Services receive a 1.5% COLA in fiscal 2022 and 2023. There is a new pay scale for general county employees with a 1.5% COLA and a 2% across the board salary increase.
Garrett	2.0%	No	All county employees received the same 2.0% COLA, effective July 3, 2021.
Harford	3.0%	Yes	$3,000 merit increase.
Howard	2.0%	Yes	Bargaining units receive a 2.0% GSI, with the exception of Fire and Rescue, which receives a 1.5% COLA. The county notes that county government employees, generally, receive a step increase with an indicated value of 3.0%.
Kent	$2,000	No	
Montgomery	$1,684	Yes	A GSI was provided to all bargaining units; however, the amount varies. Most bargaining units receive a GSI totaling $1,684, as reported by the county. FOP and IAFF/fire management receive GSIs of 2.5% and 1.5%, respectively. In addition to a GSI, a bonus of $600 is indicated for members of MCGEO. All bargaining units receive a step or merit increase; however, as with the GSI, the amount varies between Police Management/Management Leadership Service within the bargaining units.

County	COLA/GSI	Step/Merit	Additional Comments
Prince George's	TBD	TBD	Negotiations with the county's bargaining units on fiscal matters had not been completed by the deadline for submitting responses for this report. Per the county, existing collective bargaining agreements were extended by agreement between the county and the unions.
Queen Anne's	2.0%	Yes	Value of the step indicated as 1.0% to 3.0%.
St. Mary's	1.0%	Yes	All employees, except for sworn officers and corrections employees, receive a 1.40% COLA, a 3.71% pay scale adjustment, a 2.5% merit increase, and a $500 stipend for employees at the top of their pay grade. Sworn officers received the COLA and a 2.5% to 5.0% merit increase, while corrections employees received the COLA and a 1.5% to 5.0% merit increase.
Somerset	0.93% to 5%	Yes	Somerset County made minimum wage adjustments to all county pay scales, ranging from 0.925% to 5.0%; some of these adjustments were effective July 1, 2021, while other will not become effective until January 1, 2022. Value of the step indicated as 2.5%.
Talbot	0.0%	Yes	Value of the step indicated as 1.0% to 3.0%.
Washington	1.0%	Yes	Value of the step indicated as 2.5%.
Wicomico	0.0%	No	No salary actions were adopted for fiscal 2022 for county employees.
Worcester	3.5%	No	3.5% COLA for county government employees generally. County notes that it has over 50 employees that are "maxed out" in terms of steps.
Total Jurisdictions Granting Increases	**17**	**17**	

AFSCME: American Federation of State, County and Municipal Employees
COLA: cost-of-living adjustment
FOP: Fraternal Order of Police
GSI: general salary increase
IAFF: International Association of Fire Fighters
MCGEO: Municipal and County Government Employees Organization
TBD: to be determined

Source: Department of Legislative Services

Exhibit 3

Board of Education Salary Actions in Fiscal 2022

School System	COLA/ GSI	Step/Merit	Additional Comments
Allegany	1.0%	Varies	Kirwan stipend of $1,400. Salary scale enhancements based on eligibility.
Anne Arundel	TBD	TBD	COLA for teachers TBD. COLA for majority of units is 2.0%, except for school administrators – no COLA reported. The County Board of Education had not resolved its negotiations with several units by the deadline to submit responses for this report.
Baltimore City	TBD	TBD	Negotiations with the Baltimore City Public School bargaining units on fiscal matters had not been completed by the deadline for submitting responses for this report.
Baltimore	2.0%	Varies	All bargaining units receive a COLA of 2.0%, effective January 1, 2022. Teachers receive steps ranging from 0.78% to 3.50%. Members of AFSCME receive steps ranging from 2.61% to 5.05%. Members of ESPBC receive steps ranging from 3.85% to 5.1%. School administrators and members of BCPSOPE receive 2.0% steps.
Calvert	0.0%	Yes	School administrators receive a 1.0% COLA and 1 step. Teachers receive 1 step, in addition to the potential for restorative steps for those employed in the 2010-2011 school year. Support staff get a $1.10/hour increase and the potential for the restorative step for those employed in the 2010-2011 school year.
Caroline	1.0%	Yes	Teachers and school administrators receive a 1.0% COLA. Support services receive a 2.0% COLA. All units receive 1 step.
Carroll	1.75%	Yes	School administrators and food services employees restructured the salary scales and received approximately a 2.0% to 4.0% raise depending on placement on the new scale. Teachers, AFSCME, and CASE receive a 1.75% COLA and 1 step.
Cecil	1.5%	Yes	School administrators receive established pay scale changes. Support services receive a 3.0% COLA (paraprofessionals receive 7.0%). Teachers and support services received a 1 step increase.
Charles	1.0%	Yes	Teachers and school administrators receive a 1.0% COLA and 1 step. AFSCME members receive a 1.0% COLA.
Dorchester	Varies	Yes	4.0% increase to salaries, applied across steps (actual amounts varied by step). Administrators at top of scale working 25+ years received $1,500, effective immediately over a period of 20 pays. Support personnel at top of scale working 26+ years received $1,000, effective immediately over a period of 20 pays. All groups receive 1 step.

School System	COLA/ GSI	Step/Merit	Additional Comments
Frederick	TBD	TBD	County is in ongoing negotiations with the Frederick County Teachers Association. School administrators receive a 1.5% COLA and a 3.25% step, while support staff receive a 1.35% COLA and a 2.6% step.
Garrett	1.0%	Yes	All units receive a COLA of 1.0% on average and a 1.0% step increase.
Harford	1.0%	Yes	1.0% COLA for all bargaining groups, with the exception of school administrators who receive no fiscal 2022 COLA. All groups receive a 1 step increase.
Howard	0.0%	Yes	School administrators, AFSCME, and administrative non-union staff receive a 1.0% COLA. 1 step for all groups, except for administrative non-union. 1 step for teachers is equivalent to 3.0% in the new scale. School administrators, AFSCME, and HCEA-ESP receive bonuses (in addition to steps) – $950 dollars at top of scale ($600 for food service assistants).
Kent	0.5%	Yes	Teachers and school administrators received a 0.50% COLA. Support professionals received a 1.0% COLA. Additionally, the board restructured salary scales for support professionals, resulting in new steps with a 2.0% increase. Administrators also received a $20 per month cell phone reimbursement, starting in fiscal 2021. In addition, all groups received a 1 step increase.
Montgomery	1.5%	Yes	1.5% COLA and 1 step for all bargaining groups; additionally, all bargaining groups receive a $1,100 bonus ($550 for substitute and home/hospital teachers meeting certain conditions).
Prince George's	1.0%	Yes	Teachers and AFSCME receive a 1.0% COLA, while SEIU received a 2.0% COLA. ASASP Unit III and school administrators did not receive a COLA for fiscal 2022. All bargaining units had a 1 step increase to make up for a lost step in fiscal 2010 – employees must have been continuously employed in a benefits eligible position from June 30, 2011, to July 1, 2021, to receive this additional step. Those already at the top step will receive a 2.0% differential for fiscal 2022 only. ASASP added a step to the scale in fiscal 2022. AFSCME removed the top step (step 16) in fiscal 2022. Those employees on steps 7 or below will receive a step increase, while those employees on steps 8 and above remain on the same step but receive hourly rate increases.
Queen Anne's	1.0%	Yes	All units, including support units, received a 1.0% COLA and a 1 step increase.
St. Mary's	1.75%	Yes	Teachers and support staff received a 1.75% COLA. School administrators did not receive a COLA. All units received a 1 step increase.
Somerset	1.75%	Yes	Teachers receive a 1.75% COLA, while school administrators and support staff receive a 2.0% COLA. All units receive a 1 step increase on July 1, 2021.

School System	COLA/ GSI	Step/Merit	Additional Comments
Talbot	1.0%	Yes	Teachers receive a 1.0% COLA; school administrators and support staff receive a 1.5% COLA. Teachers and support staff receive 1 step.
Washington	1.25%	No	All bargaining units receive a GSI of 1.25%.
Wicomico	0.0%	Yes	All bargaining units received 1 step. Those individual employees that did not receive a step received a $300 salary increase.
Worcester	1.0%	Yes	Teachers receive a 1.0% COLA, while support staff receive a 1.5% COLA. Additionally, teachers and support staff receive 1 step. No COLA or step is reported for school administrators.
Total Jurisdictions Granting Increases	**18**	**20**	

AFSCME: American Federation of State, County and Municipal Employees
ASASP: Association of Supervisory & Administrative School Personnel
BCPSOPE: Baltimore County Public Schools Organization of Professional Employees
CASE: Carroll Association of School Employees
COLA: cost-of-living adjustment
ESPBC: Education Support Professionals of Baltimore County
GSI: general salary increase
HCEA-ESP: Howard County Education Association – Educational Support Professionals
SEIU: Service Employees International Union
TBD: to be determined

Source: Department of Legislative Services

For further information contact: Matthew.Mickler@mlis.state.md.us